



STATE OF MICHIGAN
DEPARTMENT OF EDUCATION
LANSING



JENNIFER M. GRANHOLM
GOVERNOR

JEREMY M. HUGHES, Ph.D.
INTERIM SUPERINTENDENT
OF PUBLIC INSTRUCTION

May 6, 2005

United States Department of Education
ATTN: Gwendolyn A. Gage, Mail Stop 2600
7100 Old Landover Road
Landover, Maryland 20785-1506

Dear Ms. Gage:

Attached to this memorandum is Michigan's application for a grant award under Part B of the Individuals with Disabilities Education Act as amended in 2004 for Federal Fiscal Year (FFY) 2005-2006. Michigan received conditional approval of the FFY 2004 application. The grant award letter from the Office of Special Education Programs (OSEP) for FFY 2004 was received by the Michigan Department of Education (MDE) on July 8, 2004 (Attachment A).

In a letter from Michigan to the OSEP dated July 2, 2004, Michigan assured "that as soon as possible, Michigan will complete all of the changes set forth in the July 1, 2004 issues chart including: 34 CFR §§300.7(c)(1)(i); 300.121(a); 300.534(a)(1); 300.342(b)(1)(ii); and 300.343(a)." The current status of these changes are as follows:

- §300.7(c)(1)(i), Definitions of Autism Spectrum Disorder and Deaf-blindness. Administrative rules were effective on September 15, 2004 (Attachment B).
- §300.121(a), Legislative change to Michigan's discipline law. The MDE continues to seek a sponsor within the legislature for this statutory change.
- §§300.534(a)(1); 300.342(b)(1)(ii); and 300.343(a), Removal of the local superintendent's appeal of the IEP decision. This administrative rule was amended effective on September 15, 2005 (Attachment B).

In the July 1, 2004 letter, Michigan also assured that "it will take steps to ensure that, throughout the period of this grant award, all public agencies in the State that provide special education and related services to children with disabilities will operate their programs in a manner fully consistent with Part B. Michigan further assures that it will provide OSEP with a copy of a memorandum notifying all public agencies of changes that impact on their provision of special education and related services that are required by OSEP as a result of its review of the State's Eligibility Documents." These requirements were met in two ways: (1) when the MDE provided notice of proposed rule making, held a period of public comment and public hearings on the proposed rules, which became effective September 15, 2004, and (2) when the State Board of Education made a formal recommendation to the Michigan Legislature for statutory change, on April 9, 2003 (Attachment C).

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Ms. Gwendolyn A. Gage, Mail Stop 2600
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The grant award letter from the OSEP for FFY 2004 that was received by the MDE on July 8, 2004, also referenced Michigan's efforts to resolve complaints under 34 CFR §300.661 within 60 days. Michigan has continued to report its progress in this area in Annual Performance Reports, the last being submitted to the OSEP on March 31, 2005.

The grant award letter from FFY 2004 also established Special Conditions in Enclosure C (Attachment A). Progress reports were submitted to the OSEP dated December 1, 2004 and January 31, 2005 (Attachments D and E). The progress report submitted on January 31, 2005 indicated that all the special conditions had been met.

In addition, the MDE received a letter from the OSEP on March 16, 2004 which summarized the results of a verification visit to Michigan during the week of November 16, 2003 (Attachment F). The MDE responded to the OSEP on May 14, 2004 (Attachment G), reporting progress on meeting the 60 day timeline for complaint investigations pursuant to 34 CFR 300.661 and indicating a plan for addressing noncompliance with the due process hearing and state level review time line requirement under 34 CFR §§300.511(a), (b) and (c). This plan has been fully implemented. A new hearings database is operational and assisting in tracking of timelines. Hearings data was reported in the Annual Performance Report submitted to the OSEP on March 31, 2005. A memorandum was sent to the field on October 13, 2004 indicating sanctions that are now operational regarding compliance with due process hearings timelines (Attachment H).

This application will be available for public review from May 10, 2005 through July 10, 2005. Public comment will be accepted by the OSE/EIS from May 10, 2005 through June 10, 2005. This application may be amended and resubmitted to the OSEP based on public comment.

Please find attached to this application the following:

1. Section I, Submission Statement for Part B of IDEA
2. Section II, 1-6, Assurances, Certification and Statement
3. Section III, 1-4, Use of Funds
4. Certification Regarding Lobbying

If you have any questions or need further information, please contact Dr. Jacquelyn J. Thompson, Director, Office of Special Education and Early Intervention Services at (517) 373-9433 or ThompsonJJ@michigan.gov

Sincerely,



Jeremy M. Hughes, Ph.D.
Interim Superintendent of Public Instruction

Attachments

Index

Attachment A	Grant Award Letter from the Office of Special Education Programs (OSEP) for FFY 2004 dated July 8, 2004 <ul style="list-style-type: none">• Enclosure C - Special Conditions
Attachment B	Michigan Administrative Rules, effective September 15, 2004
Attachment C	Approval of a Recommendation to the State Legislature for Modification to the School Code at §380.1311 dated April 9, 2003
Attachment D	Progress Report dated December 1, 2004
Attachment E	Progress Report dated January 31, 2005
Attachment F	Letter from OSEP dated March 16, 2004 regarding verification visit to Michigan during the week of November 16, 2003
Attachment G	Michigan Department of Education response dated May 14, 2004
Attachment H	Time Line Compliance in Special Education Due Process Hearings dated October 13, 2004

OMB NO. 1820-0030

Expires: 08/31/05

**ANNUAL STATE APPLICATION UNDER PART B OF THE
INDIVIDUALS WITH DISABILITIES EDUCATION ACT AS AMENDED IN 2004
FOR FEDERAL FISCAL YEAR 2005**

CFDA No. 84.027A and 84.173A

ED FORM No. 9055

**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION PROGRAMS
Washington, DC 20202-2600**

Section I

A. Submission Statement for Part B of IDEA

Please select and check the appropriate statement(s) the State is using for this Federal Fiscal Year.

1. ☐ The State provides assurances that it has in effect policies and procedures to meet the eligibility requirements of Part B of the Act as found in PL 108-446. The State is able to meet all assurances found in Section II.A of this Application. (See Section IV, *Optional Technical Assistance Checklist*, which is provided to assist States in determining the disposition of policies and procedures.)
2. ☒ The State cannot provide assurances for all eligibility requirements of Part B of the Act as found in PL 108-446. The State has determined that it is unable to make the assurances that are checked as 'No' in Section II.A. However, the State assures that throughout the period of this grant award the State will operate consistent with all requirements of PL 108-446 and applicable regulations. The State will make such changes to existing policies and procedures as are necessary to bring those policies and procedures into compliance with the requirements of the IDEA, as amended, as soon as possible, and not later than July 1, 2006. The State has included the date by which it expects to complete necessary changes associated with assurances marked 'No'. (Refer to Assurances found in Section II.A.)¹
3. ☐ The State is submitting modifications to State policies and procedures previously submitted to the Department. These modifications are: (1) deemed necessary by the State, for example when the State revises applicable State law or regulations; (2) required by the Secretary because there is a new interpretation of the Act or regulations by a Federal court or the State's highest court; and/or (3) because of an official finding of noncompliance with Federal law or regulations.

B. Conditional Approval for Current Grant Year

If the State received conditional approval for the current grant year, check the appropriate statement below:

1. ☐ The State previously has submitted documentation of completion of all issues identified in the FFY 04 conditional approval letter.
2. ☐ The State is attaching documentation of completion of all issues identified in the FFY 04 conditional approval letter. (*Attach documentation showing completion of all issues.*)
3. ☒ The State has not completed all issues identified in the FFY 04 conditional approval letter. (*Attach documentation showing completion of any issues and a list of items not yet completed.*)

Section II

A. Assurances

The State makes the following assurances and provisions as required by Part B of the Individuals with Disabilities Education Act. (20 U.S.C. 1411-1419)

Check and enter date(s) as applicable		Assurances (20 U.S.C. 1411-1419)
Yes (Assurance is given.)	No (Assurance cannot be given. Provide date on which State will complete changes in order to provide assurance.)	
X		1. As applicable, the assurance in OMB Standard Form 424B (Assurances for Non-Construction Programs), relating to legal authority to apply for assistance; access to records; conflict of interest; merit systems; nondiscrimination; Hatch Act provisions; labor standards; flood insurance; environmental standards; wild and scenic river systems; historic preservation; protection of human subjects; animal welfare; lead-based paint; Single Audit Act; and general agreement to comply with all Federal laws, executive orders and regulations.
X		2. A free appropriate public education is available to all children with disabilities residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled, in accordance with 20 U.S.C. 1412(a)(1).
X		3. The State has established a goal of providing a full educational opportunity to all children with disabilities and a detailed timetable for accomplishing that goal (20 U.S.C. 1412(a)(2)).
X		4. All children with disabilities residing the State, including children with disabilities who are homeless or are wards of the State and children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services in accordance with 20 U.S.C. 1412(a)(3).
	X 7-1-05	5. An individualized education program, or an individualized family service plan that meets the requirements of 20 U.S.C. 1436(d), is developed, reviewed, and revised for each child with a disability in accordance with 20 U.S.C. 1414(d). (20 U.S.C. 1412(a)(4))

Check and enter date(s) as applicable		Assurances (20 U.S.C. 1411-1419)
Yes (Assurance is given.)	No (Assurance cannot be given. Provide date on which State will complete changes in order to provide assurance.)	
X		6. To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily in accordance with 20 U.S.C. 1412(a)(5)(A)-(B).
	X 7-1-05	7. Children with disabilities and their parents are afforded the procedural safeguards required by 20 U.S.C. 1415 and in accordance with 20 U.S.C. 1412(a)(6).
	X 6-30-06	8. Children with disabilities are evaluated in accordance with subsections (a) through (c) of 20 U.S.C. 1414. (20 U.S.C. 1412(a)(7))
X		9. Agencies in the State comply with 20 U.S.C. 1417(c) (relating to the confidentiality of records and information). (20 U.S.C. 1412(a)(8))
X		10 Children participating in early intervention programs assisted under part C, and who will participate in preschool programs assisted under this part, experience a smooth and effective transition to those preschool programs in a manner consistent with 20 U.S.C. 1437(a)(9). By the third birthday of such a child, an individualized education program or, if consistent with 20 U.S.C. 1414(d)(2)(B) and 20 U.S.C. 1436(d), an individualized family service plan, has been developed and is being implemented for the child. The local educational agency will participate in transition planning conferences arranged by the designated lead agency under 20 U.S.C. 1435(a)(10). (20 U.S.C. 1412(a)(9))
X		11. To the extent consistent with the number and location of children with disabilities in the State who are enrolled by their parents in private elementary schools and secondary schools in the school district served by a local educational agency, provision is made for the participation of those children in the program assisted or carried out under this part by providing for such children special education and related services in accordance with the requirements found in 20 U.S.C. 1412(a)(10)(A)-(C) unless the Secretary has arranged for services to those children under subsection (f) [By pass].
	X 9-1-05	12. The State educational agency is responsible for ensuring that the requirements of part B are met according to 20 U.S.C. 1412(a)(11)(A)-(C).

Check and enter date(s) as applicable		Assurances (20 U.S.C. 1411-1419)
Yes (Assurance is given.)	No (Assurance cannot be given. Provide date on which State will complete changes in order to provide assurance.)	
X		13. The Chief Executive Officer of a State or designee of the officer shall ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each public agency described in subparagraph (B) of 20 U.S.C. 1412(a)(12) and the State educational agency, in order to ensure that all services described in subparagraph (B)(i) that are needed to ensure a free appropriate public education are provided, including the provision of such services during the pendency of any dispute under clause (iii). Such agreement or mechanism shall meet the requirements found in 20 U.S.C. 1412(a)(12)(A)-(C).
X		14. The State educational agency will not make a final determination that a local educational agency is not eligible for assistance under this part without first affording that agency reasonable notice and an opportunity for a hearing. (20 U.S.C. 1412(a)(13))
	X 6-30-06	15. The State educational agency has established and maintains qualifications to ensure that personnel necessary to carry out this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities as noted in 20 U.S.C. 1412(a)(14)(A)-(E).
X		16. The State has established goals for the performance of children with disabilities in the State that meet the requirements found in 20 U.S.C. 1412(a)(15)(A)-(C).
X		17. All children with disabilities are included in all general State and districtwide assessment programs, including assessments described under section 1111 of the Elementary and Secondary Education Act of 1965, with appropriate accommodations and alternate assessments where necessary and as indicated in their respective individualized education programs as noted in 20 U.S.C. 1412(a)(16)(A)-(E).
X		18. Funds paid to a State under this part will be expended in accordance with all the provisions of part B including 20 U.S.C. 1412(a)(17)(A)-(C).
X		19. The State will not reduce the amount of State financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year in accordance with 20 U.S.C. 1412(a)(18)(A)-(D).

Check and enter date(s) as applicable		Assurances (20 U.S.C. 1411-1419)
Yes (Assurance is given.)	No (Assurance cannot be given. Provide date on which State will complete changes in order to provide assurance.)	
X		20. Prior to the adoption of any policies and procedures needed to comply with this section (including any amendments to such policies and procedures), the State ensures that there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of children with disabilities. (20 U.S.C. 1412(a)(19))
X		21. In complying with 20 U.S.C. 1412(a)(17) and (18), a State may not use funds paid to it under this part to satisfy State-law mandated funding obligations to local educational agencies, including funding based on student attendance or enrollment, or inflation. (20 U.S.C. 1412(a)(20))
	X 6-30-06	22. The State has established and maintains an advisory panel for the purpose of providing policy guidance with respect to special education and related services for children with disabilities in the State as found in 20 U.S.C. 1412(a)(21)(A)-(D)).
	X 6-30-06	23. The State educational agency examines data, including data disaggregated by race and ethnicity, to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities in accordance with 20 U.S.C. 1412(a)(22)(A)-(B).
	X 6-30-06	24. The State adopts the National Instructional Materials Accessibility Standard for the purposes of providing instructional materials to blind persons or other persons with print disabilities, in a timely manner after the publication of the National Instructional Materials Accessibility Standard in the Federal Register in accordance with 20 U.S.C. 1412(a)(23)(A)-(E).
X		25. The State has in effect, consistent with the purposes of the IDEA and with 20 U.S.C. 1418(d), policies and procedures designed to prevent the inappropriate over identification or disproportionate representation by race and ethnicity of children as children with disabilities, including children with disabilities with a particular impairment described in 20 U.S.C. 1401. (20 U.S.C 1412(a)(24))
X		26. The State educational agency shall prohibit State and local educational agency personnel from requiring a child to obtain a prescription for a substance covered by the Controlled Substances Act (21 U.S.C. 801 et seq.) as a condition of attending school, receiving an evaluation under subsection (a) or (c) of 20 U.S.C. 1414, or receiving services under the IDEA as described in 20 U.S.C. 1412(a)(25)(A)-(B).

Check and enter date(s) as applicable		Assurances (20 U.S.C. 1411-1419)
Yes (Assurance is given.)	No (Assurance cannot be given. Provide date on which State will complete changes in order to provide assurance.)	
X		27. The State shall distribute any funds the State does not reserve under 20 U.S.C. 1411(e) to local educational agencies (including public charter schools that operate as local educational agencies) in the State that have established their eligibility under 20 U.S.C. 1413 for use in accordance with this part as provided for in 20 U.S.C. 1411(f)(1)-(3).
X		28. The State shall provide data to the Secretary on any information that may be required by the Secretary. (20 U.S.C. 1418(a)(3))
X		29. The State, local educational agencies, and educational service agencies shall use fiscal control and fund accounting procedures that insure proper disbursement of and accounting for Federal funds. (34 CFR §76.702.)
X		30. The State will continue to comply with the regulations that are still applicable and currently in place.

B. Certifications

The State Educational Agency is providing the following certifications:

Yes	
X	<p>1. The State certifies that ED Form 80-0013, <i>Certification Regarding Lobbying</i>, is on file with the Secretary of Education.</p> <p>With respect to the <i>Certification Regarding Lobbying</i> the State recertifies that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making or renewal of Federal grants under this program; that the State shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," when required (34 CFR Part 82, Appendix B); and that the State Agency shall require the full certification, as set forth in 34 CFR Part 82, Appendix A, in the award documents for all sub awards at all tiers.</p>
X	<p>2. The State certifies that certifications in the Education Department General Administrative Regulations (EDGAR) at 34 CFR §80.11 relating to State eligibility, authority and approval to submit and carry out the provisions of its State application, and consistency of that application with State law are in place within the State.</p>
X	<p>3. The State certifies that the arrangements to establish responsibility for services pursuant to 20 U.S.C. 1412(a)(12)(A) are current. This certification must be received prior to the expenditure of any funds reserved by the State under 20 U.S.C. 1411(e)(1).</p>

C. Statement

I certify that the State of **Michigan** can make the assurances checked as 'yes' in Section II.A and the certifications required in Section II.B of this application. These provisions meet the requirements of the Part B of the Individuals with Disabilities Education Act as found in PL 108-446. The State will operate its Part B program in accordance with all of the required assurances and certifications.


If any assurances have been checked 'no', I certify that the State will operate throughout the period of this grant award consistent with the requirements of the IDEA as found in PL 108-446 and any applicable regulations, and will make such changes to existing policies and procedures as are necessary to bring those policies and procedures into compliance with the requirements of the IDEA, as amended, as soon as possible, and not later than July 1, 2006. (34 CFR §76.104)

I, the undersigned authorized official of the

Jeremy M. Hughes, Ph.D., Interim Superintendent of Public Instruction

(Name of State and official name of State agency)

am designated by the Governor of this State to submit this application for FFY 2005 funds under Part B of the Individuals with Disabilities Education Act (IDEA).

Printed/Typed Name and Title of Authorized Representative of the State: Jeremy M. Hughes, Ph.D., Interim Superintendent of Public Instruction	
Signature: 	Date: May 6, 2005

Section III

Description of Use of Funds Under Part B of the Individuals with Disabilities Education Act – 20 U.S.C. 1411(e)(5)

Describe how the amount retained by the State educational agency under 20 U.S.C. 1411(e)(1) will be used to meet the following activities under Part B. (20 U.S.C. 1411(e)(1)–(3), (6) and (7). The Department annually identifies for States the maximum amount that a State may retain under Section 611(e)(1) and (2).² The amounts or percentages listed by the State in this chart for administration and for other State activities should add up to less or equal to the amount or percentage provided to the State by the Department for each of these activities.

FOR ADMINISTRATIVE ACTIVITIES UNDER PART B	PERCENTAGE OF TOTAL STATE ALLOCATIONS
	<i>Note: Other measures of the amounts that will be used for these purposes may be substituted.</i>
For the purpose of administering this part, including 20 U.S.C. 1411(e)(3), 20 U.S.C. 1419, and the coordination of activities under this part with, and providing technical assistance to, other programs that provide services to children with disabilities (20 U.S.C. 1411(e)(1)(A))	
The administration of Part C of IDEA, if the SEA is the Lead Agency for the State under Part C. (20 U.S.C. 1411 (e)(1)(D))	
A State may use funds the State reserves for administration that are the result of inflationary increases described in 20 U.S.C. 1411(e)(1)(B) for the following activities: (20 U.S.C. 1411(e)(6))	
For support and direct services, including technical assistance, personnel preparation, and professional development and training.	
To assist local educational agencies in providing positive behavioral interventions and supports and appropriate mental health services for children with disabilities.	
To assist local educational agencies in meeting personnel shortages.	
To support capacity building activities and improve the delivery of services by local educational agencies to improve results for children with disabilities.	
Flexibility in Using Funds for Part C (20 U.S.C. 1411(e)(7))	
Any State eligible to receive a grant under 20 U.S.C. 1419 may use funds made available under 20 U.S.C. 1411(e)(1)(A), 20 U.S.C. 1411(f)(3), or 20 U.S.C. 1419(f)(5) to develop and implement a State policy jointly with the lead agency under	

² Each State may reserve for each fiscal year not more than the maximum amount the State was eligible to reserve for State administration under this section for fiscal year 2004 or \$800,000 (adjusted in accordance with 20 U.S.C. 1411(e)(1)(B)), whichever is greater; and each outlying area may reserve for each fiscal year not more than 5 percent of the amount the outlying area receives under 20 U.S.C. 1411(b)(1) for the fiscal year or \$35,000, whichever is greater.

For each fiscal year beginning with fiscal year 2005, the Secretary shall cumulatively adjust: 1) the maximum amount the State was eligible to reserve for State administration under this part for fiscal year 2004; and 2) \$800,000, by the rate of inflation as measured by the percentage increase, if any, from the preceding fiscal year in the *Consumer Price Index For All Urban Consumers*, published by the Bureau of Labor Statistics of the Department of Labor.

FOR ADMINISTRATIVE ACTIVITIES UNDER PART B	PERCENTAGE OF TOTAL STATE ALLOCATIONS
	<i>Note: Other measures of the amounts that will be used for these purposes may be substituted.</i>
part C and the State educational agency to provide early intervention services (which shall include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills) in accordance with part C to children with disabilities who are eligible for services under 20 U.S.C. 1419 and who previously received services under part C until such children enter, or are eligible under State law to enter, kindergarten, or elementary school as appropriate.	
Establishment of High Cost Fund (20 U.S.C. 1411(e)(3)(B)(i))	
A State shall not use any of the funds the State reserves pursuant to 20 U.S.C. 1411(e)(3)(A)(i), <u>but may use the funds the State reserves under 20 U.S.C. 1411(e)(1)</u> , to establish and support the high cost fund.	

FOR OTHER STATE-LEVEL ACTIVITIES	PERCENTAGE OF TOTAL STATE ALLOCATIONS
	<i>Note: Other measures of the amounts that will be used for these purposes may be substituted.</i>
Required Activities Funds reserved under 20 U.S.C. 1411(e)(2)(A) shall be used to carry out the following activities:	
For monitoring, enforcement, and complaint investigation	
To establish and implement the mediation process required by 20 U.S.C. 1415(e), including providing for the cost of mediators and support personnel.	
Authorized Activities Funds reserved under 20 U.S.C. 1411(e)(2)(A) may be used to carry out the following activities:	
For support and direct services, including technical assistance, personnel preparation, and professional development and training.	
To support paperwork reduction activities, including expanding the use of technology in the IEP process.	
To assist local educational agencies in providing positive behavioral interventions and supports and appropriate mental health services for children with disabilities.	
To improve the use of technology in the classroom by children with disabilities to enhance learning.	
To support the use of technology, including technology with	

FOR OTHER STATE-LEVEL ACTIVITIES	PERCENTAGE OF TOTAL STATE ALLOCATIONS <i>Note: Other measures of the amounts that will be used for these purposes may be substituted.</i>
universal design principles and assistive technology devices, to maximize accessibility to the general education curriculum for children with disabilities.	
Development and implementation of transition programs, including coordination of services with agencies involved in supporting the transition of children with disabilities to postsecondary activities.	
To assist local educational agencies in meeting personnel shortages.	
To support capacity building activities and improve the delivery of services by local educational agencies to improve results for children with disabilities.	
Alternative programming for children with disabilities who have been expelled from school, and services for children with disabilities in correctional facilities, children enrolled in State-operated or State-supported schools, and children with disabilities in charter schools.	
To support the development and provision of appropriate accommodations for children with disabilities, or the development and provision of alternate assessments that are valid and reliable for assessing the performance of children with disabilities, in accordance with Sections 1111(b) and 6111 of the Elementary and Secondary Education Act of 1965.	
To provide technical assistance to schools and local educational agencies, and direct services, including supplemental educational services as defined in Section 1116(e) of the Elementary and Secondary Education Act of 1965 to children with disabilities, in schools or local educational agencies identified for improvement under Section 1116 of the Elementary and Secondary Education Act of 1965 on the sole basis of the assessment results of the disaggregated subgroup of children with disabilities, including providing professional development to special and regular education teachers, who teach children with disabilities, based on scientifically based research to improve educational instruction, in order to improve academic achievement to meet or exceed the objectives established by the State under Section 1111(b)(2)(G) the Elementary and Secondary Education Act of 1965.	
Local Educational Agency Risk Pool (20 U.S.C. 1411(e)(3)(A)): For the purpose of assisting local educational agencies (including a charter school that is a local educational agency or a consortium of local educational agencies) in addressing the needs of high need children with disabilities, each State shall have the option to reserve for each fiscal year 10 percent of the amount of funds the State reserves for State-level activities under 20 U.S.C. 1411(e)(2)(A)—	

FOR OTHER STATE-LEVEL ACTIVITIES	PERCENTAGE OF TOTAL STATE ALLOCATIONS
To establish and make disbursements from the high cost fund to local educational agencies in accordance with 20 U.S.C. 1411(e)(3) during the first and succeeding fiscal years of the high cost fund; and	<i>Note: Other measures of the amounts that will be used for these purposes may be substituted.</i>
To support innovative and effective ways of cost sharing by the State, by a local educational agency, or among a consortium of local educational agencies, as determined by the State in coordination with representatives from local educational agencies, subject to 20 U.S.C. 1411(e)(3)(B)(ii) [Amount may not be more than 5% of the amount reserved for the LEA Risk Pool.].	
Establishment of High Cost Fund (20 U.S.C. 1411(e)(3)(B)(i))	
A State shall not use any of the funds the State reserves pursuant to 20 U.S.C. 1411(e)(3)(A)(i), <u>but may use the funds the State reserves under 20 U.S.C. 1411(e)(1)</u> , to establish and support the high cost fund.	
Describe the process used to get input from LEAs regarding the distribution of amounts among activities described in the above charts to meet State priorities. 20 U.S.C. 1411(e)(5)(B)	

Section III

Description of Use of Funds Under Part B of the Individuals with Disabilities Education Act – 20 U.S.C. 1411(e)(5)

Describe how the amount retained by the State educational agency under 20 U.S.C. 1411(e)(1) will be used to meet the following activities under Part B. (20 U.S.C. 1411(e)(1)–(3), (6) and (7). The Department annually identifies for States the maximum amount that a State may retain under Section 611(e)(1) and (2).¹ The amounts or percentages listed by the State in this chart for administration and for other State activities should add up to less or equal to the amount or percentage provided to the State by the Department for each of these activities.

FOR ADMINISTRATIVE ACTIVITIES UNDER PART B	PERCENTAGE OF TOTAL STATE ALLOCATIONS
	<i>Note: Other measures of the amounts that will be used for these purposes may be substituted.</i>
For the purpose of administering this part, including 20 U.S.C. 1411(e)(3), 20 U.S.C. 1419, and the coordination of activities under this part with, and providing technical assistance to, other programs that provide services to children with disabilities (20 U.S.C. 1411(e)(1)(A))	1.6%
The administration of Part C of IDEA, if the SEA is the Lead Agency for the State under Part C. (20 U.S.C. 1411 (e)(1)(D))	0.1%
A State may use funds the State reserves for administration that are the result of inflationary increases described in 20 U.S.C. 1411(e)(1)(B) for the following activities: (20 U.S.C. 1411(e)(6))	
For support and direct services, including technical assistance, personnel preparation, and professional development and training.	
To assist local educational agencies in providing positive behavioral interventions and supports and appropriate mental health services for children with disabilities.	
To assist local educational agencies in meeting personnel shortages.	
To support capacity building activities and improve the delivery of services by local educational agencies to improve results for children with disabilities.	
Flexibility in Using Funds for Part C (20 U.S.C. 1411(e)(7))	
Any State eligible to receive a grant under 20 U.S.C. 1419 may use funds made available under 20 U.S.C. 1411(e)(1)(A), 20 U.S.C. 1411(f)(3), or 20 U.S.C. 1419(f)(5) to develop and implement a State policy jointly with the lead agency under	

¹ Each State may reserve for each fiscal year not more than the maximum amount the State was eligible to reserve for State administration under this section for fiscal year 2004 or \$800,000 (adjusted in accordance with 20 U.S.C. 1411(e)(1)(B)), whichever is greater; and each outlying area may reserve for each fiscal year not more than 5 percent of the amount the outlying area receives under 20 U.S.C. 1411(b)(1) for the fiscal year or \$35,000, whichever is greater.

For each fiscal year beginning with fiscal year 2005, the Secretary shall cumulatively adjust: 1) the maximum amount the State was eligible to reserve for State administration under this part for fiscal year 2004; and 2) \$800,000, by the rate of inflation as measured by the percentage increase, if any, from the preceding fiscal year in the *Consumer Price Index For All Urban Consumers*, published by the Bureau of Labor Statistics of the Department of Labor.

FOR ADMINISTRATIVE ACTIVITIES UNDER PART B	PERCENTAGE OF TOTAL STATE ALLOCATIONS
	<i>Note: Other measures of the amounts that will be used for these purposes may be substituted.</i>
part C and the State educational agency to provide early intervention services (which shall include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills) in accordance with part C to children with disabilities who are eligible for services under 20 U.S.C. 1419 and who previously received services under part C until such children enter, or are eligible under State law to enter, kindergarten, or elementary school as appropriate.	
Establishment of High Cost Fund (20 U.S.C. 1411(e)(3)(B)(i))	
A State shall not use any of the funds the State reserves pursuant to 20 U.S.C. 1411(e)(3)(A)(i), <u>but may use the funds the State reserves under 20 U.S.C. 1411(e)(1)</u> , to establish and support the high cost fund.	

FOR OTHER STATE-LEVEL ACTIVITIES	PERCENTAGE OF TOTAL STATE ALLOCATIONS
	<i>Note: Other measures of the amounts that will be used for these purposes may be substituted.</i>
Required Activities Funds reserved under 20 U.S.C. 1411(e)(2)(A) shall be used to carry out the following activities:	
For monitoring, enforcement, and complaint investigation	2.72%
To establish and implement the mediation process required by 20 U.S.C. 1415(e), including providing for the cost of mediators and support personnel.	0.08%
Authorized Activities Funds reserved under 20 U.S.C. 1411(e)(2)(A) may be used to carry out the following activities:	
For support and direct services, including technical assistance, personnel preparation, and professional development and training.	3.53%
To support paperwork reduction activities, including expanding the use of technology in the IEP process.	0.17%
To assist local educational agencies in providing positive behavioral interventions and supports and appropriate mental health services for children with disabilities.	0.46%
To improve the use of technology in the classroom by children with disabilities to enhance learning.	

FOR OTHER STATE-LEVEL ACTIVITIES	PERCENTAGE OF TOTAL STATE ALLOCATIONS <i>Note: Other measures of the amounts that will be used for these purposes may be substituted.</i>
To support the use of technology, including technology with universal design principles and assistive technology devices, to maximize accessibility to the general education curriculum for children with disabilities.	0.27%
Development and implementation of transition programs, including coordination of services with agencies involved in supporting the transition of children with disabilities to postsecondary activities.	0.27%
To assist local educational agencies in meeting personnel shortages.	
To support capacity building activities and improve the delivery of services by local educational agencies to improve results for children with disabilities.	
Alternative programming for children with disabilities who have been expelled from school, and services for children with disabilities in correctional facilities, children enrolled in State-operated or State-supported schools, and children with disabilities in charter schools.	1.05%
To support the development and provision of appropriate accommodations for children with disabilities, or the development and provision of alternate assessments that are valid and reliable for assessing the performance of children with disabilities, in accordance with Sections 1111(b) and 6111 of the Elementary and Secondary Education Act of 1965.	
To provide technical assistance to schools and local educational agencies, and direct services, including supplemental educational services as defined in Section 1116(e) of the Elementary and Secondary Education Act of 1965 to children with disabilities, in schools or local educational agencies identified for improvement under Section 1116 of the Elementary and Secondary Education Act of 1965 on the sole basis of the assessment results of the disaggregated subgroup of children with disabilities, including providing professional development to special and regular education teachers, who teach children with disabilities, based on scientifically based research to improve educational instruction, in order to improve academic achievement to meet or exceed the objectives established by the State under Section 1111(b)(2)(G) the Elementary and Secondary Education Act of 1965.	0.45%
Local Educational Agency Risk Pool (20 U.S.C. 1411(e)(3)(A)): For the purpose of assisting local educational agencies (including a charter school that is a local educational agency or a consortium of local educational agencies) in addressing the needs of high need children with disabilities, each State shall have the option to reserve for each fiscal year 10 percent of the amount of funds the State reserves for State-	

FOR OTHER STATE-LEVEL ACTIVITIES	PERCENTAGE OF TOTAL STATE ALLOCATIONS <i>Note: Other measures of the amounts that will be used for these purposes may be substituted.</i>
level activities under 20 U.S.C. 1411(e)(2)(A)—	
To establish and make disbursements from the high cost fund to local educational agencies in accordance with 20 U.S.C. 1411(e)(3) during the first and succeeding fiscal years of the high cost fund; and	
To support innovative and effective ways of cost sharing by the State, by a local educational agency, or among a consortium of local educational agencies, as determined by the State in coordination with representatives from local educational agencies, subject to 20 U.S.C. 1411(e)(3)(B)(ii) [Amount may not be more than 5% of the amount reserved for the LEA Risk Pool.].	
Establishment of High Cost Fund (20 U.S.C. 1411(e)(3)(B)(i))	
A State shall not use any of the funds the State reserves pursuant to 20 U.S.C. 1411(e)(3)(A)(i), <u>but may use the funds the State reserves under 20 U.S.C. 1411(e)(1)</u> , to establish and support the high cost fund.	
<p>Describe the process used to get input from LEAs regarding the distribution of amounts among activities described in the above charts to meet State priorities. 20 U.S.C. 1411(e)(5)(B)</p> <p>A Special Education Advisory Committee (SEAC) meets on a monthly basis and provides input as needed. In addition, input from the Steering Committee of the Continuous Improvement and Monitoring Systems (CIMS) is considered.</p>	

CERTIFICATION REGARDING LOBBYING

Applicants must review the requirements for certification regarding lobbying included in the regulations cited below before completing this form. Applicants must sign this form to comply with the certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying." This certification is a material representation of fact upon which the Department of Education relies when it makes a grant or enters into a cooperative agreement.

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a Federal contract, grant or cooperative agreement over \$100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants and contracts under grants and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

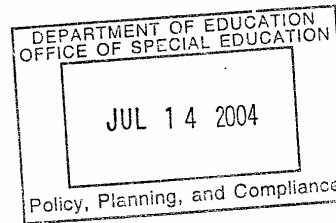
As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certification.

NAME OF APPLICANT Michigan Department of Education	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE Jeremy M. Hughes, Ph.D., Interim Superintendent of Public Instruction	
SIGNATURE	DATE May 6, 2005



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

JUL - 8 2004



Honorable Thomas Watkins
Superintendent of Public Instruction
Michigan State Department of Education
PO Box 30008
Lansing, Michigan 48909

Dear Superintendent Watkins:

This is to inform you that we have conditionally approved Michigan's Eligibility Documents for Federal Fiscal Year (FFY) 2004 under Part B of the Individuals with Disabilities Education Act (IDEA). Our determination that you are eligible for a conditional approval is based on our receipt of the following documents submitted by the Michigan State Department of Education to the U.S. Department of Education, Office of Special Education Programs (OSEP):

1. The Part B Eligibility Documents for FFY 2004 including the Eligibility Documents submitted April 13, 2000, and subsequent revisions to those Eligibility Documents and the Submission Statement submitted May 9, 2004; and
2. The July 2, 2004 letter from Michigan to OSEP in which Michigan assures that as soon as possible, Michigan will complete all of the changes set forth in the July 1, 2004 issues chart including: 34 CFR §§300.7(c)(1)(i); 300.121(a); 300.534(a)(1); 300.342(b)(1)(ii); and 300.343(a).

In the July 1, 2004 letter, Michigan also assures that, it will take steps to ensure that, throughout the period of this grant award, all public agencies in the State that provide special education and related services to children with disabilities will operate their programs in a manner fully consistent with Part B. Michigan further assures that it will provide OSEP with a copy of a memorandum notifying all public agencies of changes that impact on their provision of special education and related services that are required by OSEP as a result of its review of the State's Eligibility Documents.

Michigan's May 14, 2004 response to OSEP's Verification Visit Letter dated March 16, 2004 included information and data that demonstrate Michigan's compliance with the requirement in 34 CFR §300.661(a) and (b)(1) to ensure that complaints are resolved within 60 days after a complaint is filed, unless an extension of time is permitted due to exceptional circumstances that exist with respect to a particular complaint. OSEP recognizes Michigan's efforts to make the changes necessary to resolve complaints within timelines such as hiring six outside contractors and seven internal compliance investigators, working to develop a new database, and revising and clarifying its policy concerning what constitutes an exceptional circumstance.

RECEIVED

400 MARYLAND AVE., S.W., WASHINGTON, D.C. 20202
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JUL 12 2004

Our mission is to ensure equal access to education and to promote educational excellence throughout the Nation.
SUPERINTENDENT'S OFFICE

Page 2 - Honorable Thomas D. Watkins

However, OSEP remains concerned about Michigan's ability to sustain its progress in meeting requirements under 34 CFR §300.661 because of its longstanding noncompliance in meeting these requirements. (See OSEP's March 16, 2004 verification visit letter.) OSEP will issue shortly a separate letter responding to the FFY 2002 Annual Performance Report (that the State submitted on April 9, 2004) which will require additional reporting in order for the State to demonstrate during the FFY 2004 grant year that it continues to be in compliance with 34 CFR §300.661(a) and (b)(1). Continued resolution of this issue should be viewed as a high priority by the State.

Please note that as part of your Eligibility Documents for FFY 2004, your State has made an assurance, under 34 CFR §80.11(c), that it will comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding. Any changes made by the State, after OSEP approval, to information that is a part of a State's eligibility documentation, must meet the public participation requirements of IDEA and must be approved by OSEP before implementation.

The Michigan FFY 2004 IDEA Part B grant awards are being released subject to FFY 2004 Special Conditions, as set forth in Enclosure C, that are being imposed pursuant to the Department's authority in 34 CFR §80.12. Specifically, OSEP determined that Michigan is not reporting on the participation and performance of children with disabilities on regular assessments in the same detail as it reports on the regular assessment of nondisabled children, as required at 20 U.S.C. 1412(a)(17) and 34 CFR §300.139(a).

Your State's failure to report on the participation and performance of children with disabilities in regular and alternate assessments resulted in the Department imposing the FFY 2003 Special Conditions contained in Enclosure C of the July 7, 2003 grant award letter. On June 2, 2004 Michigan submitted its final progress report, which demonstrates that Michigan is reporting publicly and to the Secretary on the participation and performance of children with disabilities who participate in alternate and regular State and district wide assessments. However, Michigan also reported in the June 2, 2004 submission to OSEP that the State does not report to the public and to the Secretary on the participation and performance of children with disabilities on regular assessments in the same detail as it reports on the regular assessments of non-disabled children. Therefore, the Department is imposing Special Conditions on the State's FFY 2004 grant awards under Part B. The reasons for doing so and the specific conditions are detailed in the enclosure. Michigan must administer these awards both in keeping with the applicable provisions of Federal law and regulations and the Special Conditions attached to the grant award document. Acceptance by Michigan of these grant awards constitutes an agreement by the State to comply with the Special Conditions.

Enclosed are grant awards for funds currently available under the Department of Education FFY 2004 Appropriations Act for the Part B Section 611 (Grants to States) and Section 619 (Preschool Grants) programs. These funds are for use primarily in school year 2004-2005 and are available for obligation by States from July 1, 2004 through September 30, 2006.

The amount in your award for Section 619 represents the full amount of funds to which you are entitled. However, the amount shown in your award for the Section 611 program is only part of

Page 3 - Honorable Thomas D. Watkins

the total funds that will be awarded to you for FFY 2004. Of the \$10,068,106,452 appropriated for Section 611 in FFY 2004, \$4,655,106,452 is available for awards on July 1, 2004, and \$5,413,000,000 will be available on October 1, 2004.

The funding formula under Section 611 is the same as the formula implemented for FFY 2000. Subject to certain maximum and minimum funding requirements, State allocations are based on the amount that each State received from FFY 1999 funds, the general population in the age range for which each State ensures a free appropriate public education (FAPE) to all children with disabilities, and the number of children living in poverty in the age range for which each State ensures FAPE to all children with disabilities.

Enclosure A provides a short description of how Section 611 funds were allocated and how those funds can be used. In addition, Table I in Enclosure A shows funding levels for distribution of Section 611 funds.

Enclosure B provides a short description of how Section 619 funds were allocated and how those funds can be used. In addition, Table II in Enclosure B shows State-by-State funding levels for distribution of Section 619 funds.

These awards are based on submission of a complete Eligibility Document, a signed assurance statement regarding resolution of issues identified in OSEP's review of the Eligibility Documents, and implementation of the provisions of the Individuals with Disabilities Education Act. The complete Eligibility Document and assurances must be made available for public inspection.

Section 604 of the IDEA provides that "[a] State shall not be immune under the eleventh amendment to the Constitution of the United States from suit in Federal court for a violation of this Act." Therefore, by accepting this grant a State is expressly agreeing to a waiver of Eleventh Amendment immunity as a condition of IDEA funding.

We appreciate your ongoing commitment to the provision of quality educational services to children with disabilities.

Sincerely,



Stephanie Smith Lee
Director
Office of Special Education Programs

Enclosures

cc: Dr. Jacquelyn Thompson

ENCLOSURE C

SPECIAL CONDITIONS

1. **Basis for Requiring Special Conditions**

The requirements that States ensure that children with disabilities participate in State- and district-wide assessment systems; develop and administer alternate assessments, if necessary; and report publicly on the participation and performance of children with disabilities in State- and district-wide assessments, are crucial to ensuring that children with disabilities are provided access to high-quality instruction in the general curriculum, and that States and districts are held accountable for the progress of these children. 20 U.S.C. 1412(a)(16)-(17); 34 CFR §§300.137-300.139. The requirements regarding performance goals and indicators and the participation of children with disabilities in and reporting on participation and performance of children with disabilities in regular assessments have been in effect since July 1, 1998; the requirements regarding reporting on alternate assessments have been in effect since July 1, 2000. According to the information reported to the Department in the Biennial Performance Report for the 2000-2001 school year, Michigan was not reporting publicly and to the Secretary on the participation and performance of children with disabilities in State and district-wide assessments, including alternate assessments, as required by Part B of the Individuals with Disabilities Education Act (IDEA).

Therefore, the Department determined that Michigan had not complied with all the terms and conditions of the Federal Fiscal Year 2001 awards under Part B of IDEA, and, under the authority of the Education Department General Administrative Regulations, 34 CFR §80.12, the Department imposed Special Conditions on Michigan's Federal Fiscal Year 2002 and 2003 awards under Part B. The Special Conditions imposed on Michigan's Federal Fiscal Year 2003 awards required that Michigan demonstrate, by May 31, 2004, that it was reporting publicly and to the Secretary on the participation and performance of children with disabilities in regular and alternate assessments, (including the alternate assessment for children with mild cognitive impairments), in the same frequency and detail as nondisabled students, as required at 20 U.S.C. 1412(a)(17) and 34 CFR §300.139(a).

Michigan's January 29, 2004 progress report indicates that Michigan has developed and administered an alternate assessment for those children with disabilities who cannot participate in the State and district wide assessments. The report indicates that until the MI-Access Phase 2 assessments, which are for students who have, or function as if they have, mild cognitive impairment, are ready for statewide administration; MDE has adopted the BRIGANCE assessments in the content areas of mathematics and English language arts. On June 2, 2004, Michigan submitted its final progress report, which demonstrates that Michigan is reporting publicly and to the Secretary on the participation and performance of children with disabilities who participate in alternate and regular State and district wide assessments. However,

*from
Jeremy to E*

Michigan also reported in the June 2, 2004 submission to OSEP that the State does not report to the public and to the Secretary on the participation and performance of children with disabilities on regular assessments in the same detail as it reports on the regular assessments of nondisabled children. For example, MEAP has four performance categories for non-disabled children, but the demographic reports only provided information on the number of students with disabilities who are proficient. Another example is that the demographic report does not disaggregate the MEAP results for students with disabilities by gender and ethnicity, as it does for nondisabled students. Therefore, the Department is imposing Special Conditions on Michigan's Federal Fiscal Year 2004 awards under Part B.

2. Nature of the Special Conditions

By May 30, 2005, Michigan must demonstrate that it is reporting publicly and to the Secretary on the participation and performance of children with disabilities on regular assessments in the same detail as it reports on the regular assessment of nondisabled children, unless it would result in the disclosure of performance results identifiable to individual children, as required at 20 U.S.C. 1412(a)(17) and 34 CFR §300.139(a). The State must submit information on reporting publicly on the participation and performance of children with disabilities on regular assessments in the Annual Performance Report format provided by OSEP. (This format is available at <http://www.ed.gov/policy/speced/guid/idea/monitor/index.html>.)

The State must:

- a. Submit to OSEP by December 1, 2004, a written plan detailing the steps and timelines for reporting publicly and to the Secretary on the participation and performance of children with disabilities on regular assessments in the same detail as it reports on the regular assessment of nondisabled children, unless it would result in the disclosure of performance results identifiable to individual children by May 30, 2005.
- b. Submit progress reports on January 31, 2005, March 28, 2005, and a final submission on May 30, 2005. The final submission that includes information on reporting publicly on the participation and performance of children with disabilities in regular assessments is to be submitted in the Annual Performance Report format provided by OSEP. (This format is available at <http://www.ed.gov/policy/speced/guid/idea/monitor/index.html>.)

3. Evidence Necessary for Conditions To Be Removed

The Department will remove the special conditions if, at any time prior to the expiration of the grant year, Michigan provides documentation, satisfactory to the Department, that it has fully met the requirements to report publicly and to the Secretary on the participation and performance of children with disabilities in

alternate assessments. This information is to be submitted in the Annual Performance Report format provided by OSEP. (This format is available at <http://www.ed.gov/policy/speced/guid/idea/monitor/index.html>.)

4. Method of Requesting Reconsideration

The State can write to Dr. Al Jones if it wishes the Department to reconsider any aspect of these Special Conditions. The request must describe in detail the changes to the Special Conditions sought by the State and the reasons for those requested changes.

5. Submission of Reports

All reports that are required to be submitted by Michigan to the Department under the Special Conditions should be submitted to:

U.S. Department of Education
Office of Special Education and Rehabilitative Services
Attn: Dr. Al Jones, Room 4035
400 Maryland Ave, SW
Washington, DC 20202-2600

Special Conditions Plan
Reporting Publicly on the Participation and Performance of Children with
Disabilities in State Assessment (regular assessment)

6/2/04

§300.139(b)(2) and (3) Reporting Related to State Assessments

MEAP

As of December 21, 2003, Michigan's general assessment program called the Michigan Educational Assessment Program (MEAP) was moved from the Michigan Department of Treasury back to the Michigan Department of Education (MDE). In addition, the MDE created the Office of Educational Assessment and Accountability (OEAA). This office houses four programs related to state assessment and accountability. They are the MEAP, Assessment for Students with Disabilities Program (includes MI-Access), English Language Learners Assessment Program, and the School Accountability Program. As a result, this provides an opportunity for improved communication related to students with disabilities and state assessment needs. Information related to all four OEAA programs are posted publicly at www.mi.gov/oeaa.

In the June 2004 status report letter, Michigan indicated that it recognized that the MEAP information reported for students with disabilities was not reported in the same manner and level of detail used for the regular statewide reports. For example, MEAP has four performance categories: Level 1 (Apprentice), Level 2 (At Basic Level), Level 3 (Met Michigan Standards) and Level 1 (Exceeded Michigan Standards). The demographic reports only provided information on the number of students who are "proficient" for No Child Left Behind purposes and not by each of the four performance categories. Another example was that the demographic report did not disaggregate the MEAP results for students with disabilities by gender or ethnicity. The MEAP results for students with disabilities for the 2003/2004 school year are currently being produced. The following is the time line for production.

Statewide Achievement Report

This report contains the overall performance information, by performance categories, for 1) all students, 2) students with disabilities, and students without disabilities for all grades and content areas assessed.

Completion Date: December 3, 2004

Statewide Demographic Summary

This report provides overall performance by specific demographics including gender, ethnicity, economically disadvantaged, special education, standard accommodations, nonstandard accommodations, limited English proficient, formerly English language proficient, migrant, homeless, and less than a full academic year. A demographic summary report is being produced for 1) students with disabilities and 2) for students without disabilities for the grades the regular demographic summary is produced (grades 4, 5, 7 and 8). At this time one is not produced for high school.

Completion Date: December 15, 2004

However, as stated in the June 2004 status letter, starting with the 2004/2005 MEAP will produce all of the state level reports for students with disabilities in the same detail as students without disabilities as required by IDEA. Draft samples of some of the new reports that will be produced can be downloaded from <http://www.mi-access.info/meapinfo.htm>. In addition, these reports will be generated as part of the primary reports and will be produced at the *same time* as all of the MEAP reports. In addition, they will be reported at the same time as all of the MEAP reports are provided to the public, both in print and posted on the MEAP Web page (www.mi.gov/meap).

DEPARTMENT OF EDUCATION
STATE BOARD OF EDUCATION
SPECIAL EDUCATION PROGRAMS AND SERVICES

Filed with the Secretary of State on September 7, 2004.
These rules take effect on September 15, 2004.

(By authority conferred on the state board of education by sections 1701 and 1703 of 1976 PA 451, MCL 380.1701 and 380.1703)

R 340.1713, R 340.1715, R 340.1722a, R 340.1733, R 340.1749a, R 340.1749b, R 340.1756, R 340.1758, R 340.1799 of the Michigan Administrative Code are amended; and R 340.1717, are added to the Code as follows:

PART 1.
GENERAL PROVISIONS

R 340.1713 Specific learning disability defined; determination.

Rule 13. (1) "Specific learning disability" means a disorder in 1 or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations. The term includes such conditions as perceptual impairments, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include children who have learning problems that are primarily the result of a visual, hearing, or motor impairment, of a cognitive impairment, of an emotional impairment, of autism spectrum disorder, or of environmental, cultural, or economic disadvantage.

(2) The individualized education program team may determine that a child has a specific learning disability if the child does not achieve commensurate with his or her age and ability levels in 1 or more of the areas listed in this subrule, when provided with learning experiences appropriate for the child's age and ability levels, and if the multidisciplinary evaluation team finds that a child has a severe discrepancy between achievement and intellectual ability in 1 or more of the following areas:

- (a) Oral expression.
- (b) Listening comprehension.
- (c) Written expression.
- (d) Basic reading skill.
- (e) Reading comprehension.
- (f) Mathematics calculation.
- (g) Mathematics reasoning.

(3) The individualized education program team shall not identify a child as having a specific learning disability if the severe discrepancy between ability and achievement is primarily the result of any of the following:

- (a) A visual, hearing, or motor impairment.
- (b) Cognitive impairment.
- (c) Emotional impairment.
- (d) Autism spectrum disorder.
- (e) Environmental, cultural, or economic disadvantage.

June 28, 2004

(4) At least 1 individualized education program team member other than the student's general education teacher shall observe the student's academic performance in the general education classroom setting. For a child who is less than school age or who is out of school, an individualized education program team member shall observe the child in an environment appropriate for a child of that age.

(5) For a student suspected of having a specific learning disability, the documentation of the individualized education program team's determination of eligibility shall include a statement concerning all of the following:

- (a) Whether the student has a specific learning disability.
- (b) The basis for making the determination.
- (c) The relevant behavior noted during the observation of the student.
- (d) The relationship of that behavior to the student's academic functioning.
- (e) The educationally relevant medical findings, if any.
- (f) Whether there is a severe discrepancy between achievement and ability that is not correctable without special education and related services.
- (g) The determination of the team concerning the effects of environmental, cultural, or economic disadvantage.

(6) Each individualized education program team member shall certify, in writing, whether the report reflects his or her conclusion. If it does not reflect his or her conclusion, the team member shall submit a separate statement presenting his or her conclusions.

(7) A determination of learning disability shall be based upon a comprehensive evaluation by a multidisciplinary evaluation team, which shall include at least both of the following:

(a) The student's general education teacher or, if the student does not have a general education teacher, a general education teacher qualified to teach a student of his or her age or, for a child of less than school age, an individual qualified by the state educational agency to teach a child of his or her age.

(b) At least 1 person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, an authorized provider of speech and language under R 340.1745(d), or a teacher consultant.

R 340.1715 Autism spectrum disorder defined; determination.

Rule 15. (1) Autism spectrum disorder is considered a lifelong developmental disability that adversely affects a student's educational performance in 1 or more of the following performance areas:

- (a) Academic.
- (b) Behavioral.
- (c) Social.

Autism spectrum disorder is typically manifested before 36 months of age. A child who first manifests the characteristics after age 3 may also meet criteria. Autism spectrum disorder is characterized by qualitative impairments in reciprocal social interactions, qualitative impairments in communication, and restricted range of interests/repetitive behavior.

(2) Determination for eligibility shall include all of the following:

(a) Qualitative impairments in reciprocal social interactions including at least 2 of the following areas:

- (i) Marked impairment in the use of multiple nonverbal behaviors such as eye-to-eye gaze, facial expression, body postures, and gestures to regulate social interaction.
- (ii) Failure to develop peer relationships appropriate to developmental level.
- (iii) Marked impairment in spontaneous seeking to share enjoyment, interests, or achievements with other people, for example, by a lack of showing, bringing, or pointing out objects of interest.

(iv) Marked impairment in the areas of social or emotional reciprocity.

(b) Qualitative impairments in communication including at least 1 of the following:

- (i) Delay in, or total lack of, the development of spoken language not accompanied by an attempt to compensate through alternative modes of communication such as gesture or mime.

- (ii) Marked impairment in pragmatics or in the ability to initiate, sustain, or engage in reciprocal conversation with others.
- (iii) Stereotyped and repetitive use of language or idiosyncratic language.
- (iv) Lack of varied, spontaneous make-believe play or social imitative play appropriate to developmental level.
- (c) Restricted, repetitive, and stereotyped behaviors including at least 1 of the following:
 - (i) Encompassing preoccupation with 1 or more stereotyped and restricted patterns of interest that is abnormal either in intensity or focus.
 - (ii) Apparently inflexible adherence to specific, nonfunctional routines or rituals.
 - (iii) Stereotyped and repetitive motor mannerisms, for example, hand or finger flapping or twisting, or complex whole-body movements.
 - (iv) Persistent preoccupation with parts of objects.
- (3) Determination may include unusual or inconsistent response to sensory stimuli, in combination with subdivisions (a), (b), and (c) of subrule 2 of this rule.
- (4) While autism spectrum disorder may exist concurrently with other diagnoses or areas of disability, to be eligible under this rule, there shall not be a primary diagnosis of schizophrenia or emotional impairment.
- (5) A determination of impairment shall be based upon a comprehensive evaluation by a multidisciplinary evaluation team including, at a minimum, a psychologist or psychiatrist, an authorized provider of speech and language under R 340.1745(d), and a school social worker.

R 340.1717 Deaf-blindness defined; determination.

Rule 17. (1) Deaf-blindness means concomitant hearing impairment and visual impairment, the combination of which causes severe communication and other developmental and educational needs that cannot be accommodated in special education programs without additional supports to address the unique needs specific to deaf-blindness. Deaf-blindness also means both of the following:

(a) Documented hearing and visual losses that, if considered individually, may not meet the requirements for visual impairment or hearing impairment, but the combination of the losses affects educational performance.

(b) Such students function as if they have both a hearing and visual loss, based upon responses to auditory and visual stimuli in the environment, or during vision and hearing evaluations.

(2) A determination of the disability shall be based upon data provided by a multidisciplinary evaluation team which shall include assessment data from all of the following:

- (a) Medical specialists such as any of the following:
 - (i) An ophthalmologist.
 - (ii) An optometrist.
 - (iii) An audiologist.
 - (iv) An otolaryngologist.
 - (v) An otologist.
 - (vi) A family physician or any other approved physician as defined in 1978 PA 368, MCL 333.1101 et seq.
- (b) A teacher of students with visual impairment.
- (c) A teacher of students with hearing impairment.

PART 2.
EVALUATION, ELIGIBILITY, STUDENT ASSIGNMENT,
AND DUE PROCESS PROCEDURES

R 340.1722a Implementation of individualized education program.

Rule 22a. (1) The superintendent of the school district of residence, upon receipt of the individualized education program, shall, within 7 calendar days, provide written notice to the

parent of the agency's intent to implement special education programs and services. The notice shall identify where the programs and services are to be provided and when the individualized education program begins.

(2) The parent, upon receipt of notification from the superintendent, shall have the right, at any time, to appeal the decision under R 340.1724. If the parent does not appeal, then the superintendent shall initiate the individualized education program as soon as possible, but not later than 15 school days after the parent has been notified. An initiation date may be later than 15 school days if clearly specified in the individualized education program; however, a projected initiation date shall not be used to deny or delay programs or services because they are not available and shall not be used for purposes of administrative convenience.

(3) If a student with a disability is to be provided special education or related services for the first time, then the parent has 10 calendar days after receipt of the notice from the superintendent to provide the public agency with written consent to provide special education programs and services. If the parent refuses consent or does not respond, then the public agency has the right to request a hearing under R 340.1724.

PART 3. ADMINISTRATION OF PROGRAMS AND SERVICES

R 340.1733 Program and service requirements.

Rule 33. An intermediate school district, local school district, public school academy, and any other agency shall adhere to all of the following general requirements for all programs and services for students with disabilities:

(a) Special education classrooms or areas where related services are provided shall have at least the same average number of square feet per student, light, ventilation, and heat conditions as provided for general education students in the school district.

(b) Programs for students with severe cognitive impairment and severe multiple impairments which have students under 16 years of age shall not exceed a 6-year age span at any 1 time.

(c) All other special education programs which have students under 16 years of age and which are operated in separate facilities shall not exceed a 4-year age span at any 1 time.

(d) The age span for students who are assigned to special education programs, except for programs for students with severe cognitive impairment and severe multiple impairments, operated in elementary buildings attended by children who are nondisabled, shall not exceed, at any 1 time, a 6-year age span or the age span of the students who are nondisabled in the building, whichever is less.

(e) The age span for students who are assigned to special education programs, except for programs for students with severe cognitive impairment and severe multiple impairments, operated in secondary buildings attended by students who are nondisabled, shall not exceed, at any 1 time, the age span of the students who are nondisabled in the building, except in high school buildings where students up to 26 years of age may be served. The term "nondisabled" shall not include persons participating in adult education programs.

(f) Programs for students with severe cognitive impairment, severe multiple impairments, and moderate cognitive impairment shall comply with subdivisions (b), (c), (d), and (e) of this rule unless a program is operated in accordance with an approved intermediate school district plan where, due to the low incidence of eligible students, expanded age ranges may be necessary for programmatic feasibility and meeting the needs of students.

(g) Students with disabilities qualifying for special education programs and services shall be provided with supplies and equipment at least equal to those provided to other students in general education programs, in addition to those supplies and equipment necessary to implement a student's individualized education program.

(h) Intermediate school districts, local school districts, public school academies, or a combination of such agencies in cooperation with public and private entities, shall provide or contract for the provision of transition services. Special education teachers shall be assigned to

supervise such services. Professional special education personnel, a transition coordinator, or both, shall coordinate transition services.

(i) For worksite-based learning, a written agreement/plan is required and shall be signed by the student, parent, school, and worksite representative. The agreement shall set forth all of the following information:

- (i) Expectations and standards of attainment.
- (ii) Job activities.
- (iii) Time and duration of the program.
- (iv) Wages to be paid to the student, if applicable.
- (v) Related instruction, if applicable.

The superintendent of the school district shall designate a staff member to visit the student's worksite at least once every 30 calendar days for the duration of the program to check attendance and student progress and assess the placement in terms of health, safety, and welfare of the student.

(j) Substitute instructional aides specified in R 340.1738, R 340.1739, and R 340.1748 shall be provided when assigned instructional aides are absent. In addition, teacher aides specified in R 340.1739 and R 340.1740 shall be provided when assigned teacher aides are absent.

(k) Secondary special education teachers shall teach either special education courses approved for graduation by the local education agency or special education courses within an approved special education curriculum.

R 340.1749a Elementary level resource program.

Rule 49a. (1) A special education elementary level resource program may be provided by a special education teacher.

(2) The elementary resource teacher shall serve not more than 10 students at any 1 time and not more than 18 different students and shall do either or both of the following:

(a) Provide direct instruction to students on the resource teacher's caseload and may assign grades or other evaluative measures for this instruction.

(b) Provide support to the general education classroom teachers to whom special education students on the resource teacher's caseload have been assigned. Time shall be allocated to the resource teacher to carry out this responsibility.

(3) The elementary resource teacher may provide supplemental instruction to students on his or her caseload.

(4) The elementary resource teacher may evaluate general education students within the same building who are suspected of having a disability and, therefore, may serve on the initial multidisciplinary evaluation team. The resource teacher shall be responsible for the evaluation of not more than 2 students at 1 time. Time shall be allocated to the resource teacher to carry out this responsibility.

(5) If the special education teacher to whom the student is assigned does not have an endorsement in the area which matches the student's disability, the individualized educational program team shall determine if a teacher consultant with such credentials is needed to provide consultation, resources, and support services to the resource teacher.

R 340.1749b Secondary level resource program.

Rule 49b. (1) A special education secondary level resource program may be provided by a special education teacher.

(2) A secondary resource teacher shall serve not more than 10 students at any 1 time and have a caseload of not more than 20 different students and shall do either or both of the following:

(a) Provide direct instruction for special education courses approved for graduation by the local educational agency. The teacher may assign grades or other evaluative measures for this instruction.

(b) Provide support to the general education classroom teachers to whom special education students on the resource room teacher's caseload have been assigned. Time shall be allocated to the resource teacher to carry out this responsibility.

(3) The secondary resource teacher may provide supplemental instruction to students on his or her caseload who are enrolled in general education classes. The teacher shall not teach a class and offer tutorial assistance at the same time.

(4) If the special education teacher to whom the student is assigned does not have an endorsement in the area which matches the student's disability, the individualized educational program team shall determine if a teacher consultant with such credentials is needed to provide consultation, resources, and support services to the resource teacher.

R 340.1756 Programs for students with severe language impairment.

Rule 56. (1) A public agency may establish programs for students with severe language impairment. Specific requirements for these programs are as follows:

(a) A program for students with severe language impairment conducted by a teacher of programs for students with speech and language impairment shall serve only young children with disabilities or developmental delay or elementary students with severe language impairment.

(b) The program shall have not more than 10 students or young children with speech and language impairment in the classroom at any 1 time, and the teacher shall have responsibility for the educational programming for not more than 15 different children.

(2) Students or young children with speech and language impairment eligible for this program are those with a severe disability in the comprehension or expression of language as determined through the manifestation of all of the following characteristics which adversely affects educational performance:

(a) Demonstration of functioning within or above normal intellectual potential as measured by instruments that do not rely exclusively on oral direction or oral expression.

(b) Test results on not less than 2 standardized assessment instruments or 2 subtests designed to determine language functioning which clearly show language functioning not appropriate for the child's mental age.

(c) Oral language at less than the expected level based on the child's mental age in not less than 2 of the following areas:

- (i) Phonology.
- (ii) Morphology.
- (iii) Syntax.
- (iv) Semantics.
- (v) Pragmatics.

(3) The programs for students with severe language impairment are not designed for children whose language impairment is primarily the result of autism spectrum disorder or cognitive, emotional, hearing, visual, physical, or other health impairments as defined in part 1 of these rules.

R 340.1758 Programs for students with autism spectrum disorder.

Rule 58. (1) Specific requirements for programs for students with autism spectrum disorder shall be provided using either of the following alternatives:

(a) Programs that consist of 1 classroom program for students with autism spectrum disorder shall not have more than 5 students and shall be served by a teacher of students with autism spectrum disorder. However, programs that consist of more than 1 classroom may have more than 5 students in a classroom, if the average student-to-teacher-and-aide ratio does not exceed 5 students to 1 teacher and 1 aide. A classroom with 3 or more students shall have 1 aide.

(b) A special education program described in the intermediate school district plan set forth in R 340.1832(d) and approved by the state board of education that assures the provision of educational programming for students with autism spectrum disorder.

PART 5.
QUALIFICATIONS OF TEACHERS AND OTHER PERSONNEL

R 340.1799 Teachers of students with autism spectrum disorder; special requirements.

Rule 99. The teacher education program for teachers of students with autism spectrum disorder shall include a minimum of 30 semester or equivalent hours relating to all of the following areas:

- (a) Autism spectrum disorder, including its etiology.
- (b) Child development, with special emphasis on language, communication, and cognitive development.
- (c) Behavioral intervention techniques.
- (d) Systematic curriculum development, with special emphasis on personal adjustment and prevocational education.
- (e) Home/school interactions.
- (f) Family and community support services.



NIFER M. GRANHOLM
GOVERNOR

DEPARTMENT OF EDUCATION
LANSING

Education

THOMAS D. WATKINS, JR.
SUPERINTENDENT OF
PUBLIC INSTRUCTION

Attachment C

MEMORANDUM

TO: State Board of Education

FROM: Thomas D. Watkins, Jr., Chairman

DATE: April 9, 2003

SUBJECT: Approval of a Recommendation to the State Legislature for Modification to the School Code at §380.1311

In February, 2003, the Department received from the U. S. Department of Education, Office of Special Education Programs (OSEP), "Procedures for States to Follow in Order to Receive a Grant Award Under Part B of the Individuals with Disabilities Education Act (IDEA) for Federal Fiscal Year 2003." The Part B Application (Application) submission date is May 9, 2003. It is anticipated that this Application will be submitted to the OSEP by the Superintendent with a Report to the State Board of Education at the meeting on May 22, 2003.

Funding under the IDEA for Federal Fiscal Year 2002 was conditioned on a commitment by the Department to complete certain activities identified by the OSEP as necessary to fulfill compliance with the IDEA and its implementing regulations. One of these activities requires an amendment to the School Code at §380.1311. The current language at subsection (8) states: "This section does not diminish the due process rights under federal law of a pupil who has been determined to be eligible for special education programs and services."

The OSEP has accepted the following recommendation for a change to this language as follows: "This section does not diminish the due process ANY rights under federal law of a pupil who has been determined to be eligible for special education programs and services."

It is the determination of the OSEP that this change to the language is broader than the current language and would address any rights available to pupils with disabilities under the IDEA and its regulations.

It is recommended that the State Board of Education approve a request for statutory change at §380.1311 as identified in the Superintendent's memorandum dated April 9, 2003, to be forwarded to the Legislature as a condition of Michigan's receipt of approximately \$320,000,000 in federal funds under Part B of the IDEA for Federal Fiscal Year 2003.

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www.michigan.gov/mde • (517) 373-3324

March 12, 2004

Status of Statutory Change At §380.1311

On April 9, 2003, the Michigan State Board of Education passed a resolution recommending that the State Legislature make a modification to the School Code at §380.1311 regarding suspension or expulsion of pupils (attached). The intent of the change in wording is to ensure that this section of Michigan law does not diminish any rights under federal law of a pupil who has been determined to be eligible for special education programs and services.

To date, a sponsor for the Legislative change has not been secured. Mr. Robert Morris, who is the Department of Education's legislative liaison is actively seeking a sponsor for this bill.



ANNE HURLEY
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF EDUCATION
LANSING



THOMAS D. WATKINS, JR.
SUPERINTENDENT OF
PUBLIC INSTRUCTION

December 1, 2004

Al C. Jones, Jr., Ed.D.
Education Program Specialist
Office of Special Education Programs
U.S. Department of Education
330 C Street, SW Room 3633
Washington, DC 20202-2640

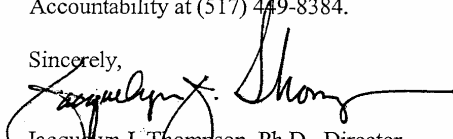
Dear Dr. Jones:

In July of 2004, we received conditional approval of Michigan's Eligibility Document Submission for Federal Fiscal Year (FFY) 2004 under Part B of the Individuals with Disabilities Education Act. The special conditions required that the Michigan Department of Education (MDE) submit to the Office of Special Education Programs (OSEP) by December 1, 2004 a written plan detailing the steps and timelines for reporting publicly and to the Secretary on the participation and performance of children with disabilities on the regular assessment of nondisabled children, unless it would result in the disclosure of performance results identifiable to individual students by May 30, 2005.

Additionally, the MDE is required to submit progress reports regarding the above plan on January 31, 2005, March 28, 2005 and the final submission due on May 30, 2005. Enclosed is the written plan detailing the steps and timelines for reporting publicly and to the Secretary on the participation and performance of children with disabilities in regular assessments.

If you have any questions regarding this progress report, please contact Peggy Dutcher, Coordinator, Assessment for Students with Disabilities Program in the Office of Educational Assessment and Accountability at (517) 449-8384.

Sincerely,


Jacquelyn J. Thompson, Ph.D., Director
Office of Special Education and
Early Intervention Services



Edward Roeber, Ph.D., Director
Office of Educational Assessment and
Accountability

Enclosure

Cc: Peggy Dutcher

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Special Conditions Plan
Reporting Publicly on the Participation and Performance of Children with
Disabilities in State Assessment (regular assessment)

6/2/04

§300.139(b)(2) and (3) Reporting Related to State Assessments

MEAP

As of December 21, 2003, Michigan's general assessment program called the Michigan Educational Assessment Program (MEAP) was moved from the Michigan Department of Treasury back to the Michigan Department of Education (MDE). In addition, the MDE created the Office of Educational Assessment and Accountability (OEAA). This office houses four programs related to state assessment and accountability. They are the MEAP, Assessment for Students with Disabilities Program (includes MI-Access), English Language Learners Assessment Program, and the School Accountability Program. As a result, this provides an opportunity for improved communication related to students with disabilities and state assessment needs. Information related to all four OEAA programs are posted publicly at www.mi.gov/oeaa.

In the June 2004 status report letter, Michigan indicated that it recognized that the MEAP information reported for students with disabilities was not reported in the same manner and level of detail used for the regular statewide reports. For example, MEAP has four performance categories: Level 1 (Apprentice), Level 2 (At Basic Level), Level 3 (Met Michigan Standards) and Level 1 (Exceeded Michigan Standards). The demographic reports only provided information on the number of students who are "proficient" for No Child Left Behind purposes and not by each of the four performance categories. Another example was that the demographic report did not disaggregate the MEAP results for students with disabilities by gender or ethnicity. The MEAP results for students with disabilities for the 2003/2004 school year are currently being produced. The following is the time line for production.

Statewide Achievement Report

This report contains the overall performance information, by performance categories, for 1) all students, 2) students with disabilities, and students without disabilities for all grades and content areas assessed.

Completion Date: December 3, 2004

Statewide Demographic Summary

This report provides overall performance by specific demographics including gender, ethnicity, economically disadvantaged, special education, standard accommodations, nonstandard accommodations, limited English proficient, formerly English language proficient, migrant, homeless, and less than a full academic year. A demographic summary report is being produced for 1) students with disabilities and 2) for students without disabilities for the grades the regular demographic summary is produced (grades 4, 5, 7 and 8). At this time one is not produced for high school.

Completion Date: December 15, 2004

However, as stated in the June 2004 status letter, starting with the 2004/2005 MEAP will produce all of the state level reports for students with disabilities in the same detail as students without disabilities as required by IDEA. Draft samples of some of the new reports that will be produced can be downloaded from <http://www.mi-access.info/meapinfo.htm>. In addition, these reports will be generated as part of the primary reports and will be produced at the *same time* as all of the MEAP reports. In addition, they will be reported at the same time as all of the MEAP reports are provided to the public, both in print and posted on the MEAP Web page (www.mi.gov/meap).



NNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF EDUCATION
LANSING



THOMAS D. WATKINS, Jr.
SUPERINTENDENT OF
PUBLIC INSTRUCTION

January 31, 2005

Al C. Jones, Jr., Ed.D.
Education Program Specialist
Office of Special Education Programs
U.S. Department of Education
550 12th Street S.W., #4035
Washington, DC 20202-2004

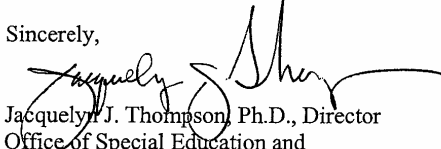
Dear Dr. Jones:

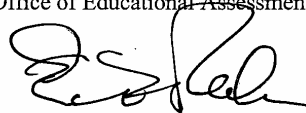
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Additionally, the MDE is required to submit progress reports regarding the above plan on January 31, 2005, March 28, 2005 and the final submission due on May 30, 2005. The December 1, 2004 the required plan (see attached) was submitted and all of the tasks that needed to be accomplished were completed by the specified dates in the plan. All of the needed MEAP reports have been produced and are posted to the public at www.mi.gov/meap. If you need any additional information related to the conditional funding please let me know.

If you have any questions regarding this progress report, please contact Peggy Dutcher, Coordinator, Assessment for Students with Disabilities Program in the Office of Educational Assessment and Accountability, at (517) 449-8384.

Sincerely,


Jacquelyn J. Thompson, Ph.D., Director
Office of Special Education and
Early Intervention Services



Edward Roeber, Ph.D., Director
Office of Educational Assessment and
Accountability

Enclosure

Cc: Peggy Dutcher

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Special Conditions Plan
Reporting Publicly on the Participation and Performance of Children with
Disabilities in State Assessment (regular assessment)
Submitted 12.01.05

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In the June 2004 status report letter, Michigan indicated that it recognized that the MEAP information reported for students with disabilities was not reported in the same manner and level of detail used for the regular statewide reports. For example, MEAP has four performance categories: Level 1 (Apprentice), Level 2 (At Basic Level), Level 3 (Met Michigan Standards) and Level 1 (Exceeded Michigan Standards). The demographic reports only provided information on the number of students who are "proficient" for No Child Left Behind purposes and not by each of the four performance categories. Another example was that the demographic report did not disaggregate the MEAP results for students with disabilities by gender or ethnicity. The MEAP results for students with disabilities for the 2003/2004 school year are currently being produced. The following is the time line for production.

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Completion Date: December 3, 2004 DONE

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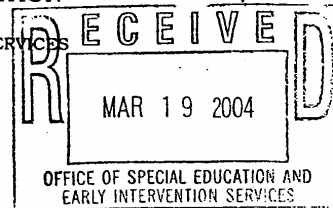
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However, as stated in the June 2004 status letter, starting with the 2004/2005 MEAP will produce all of the state level reports for students with disabilities in the same detail as students without disabilities as required by IDEA. Draft samples of some of the new reports that will be produced can be downloaded from <http://www.mi-access.info/meapinfo.htm>. In addition, these reports will be generated as part of the primary reports and will be produced at the *same time* as all of the MEAP reports. In addition, they will be reported at the same time as all of the MEAP reports are provided to the public, both in print and posted on the MEAP Web page (www.mi.gov/meap). **DONE**



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES



Honorable Thomas D. Watkins
Superintendent of Public Instruction
Michigan Department of Education
608 West Allegan Street
P.O. Box 30008
Lansing, Michigan 48909

MAR 16 2004

Dear Superintendent Watkins:

The purpose of this letter is to inform you of the results of the Office of Special Education Programs' (OSEP's) recent verification visit to Michigan. As indicated in my letter to you of August 19, 2003, OSEP is conducting verification visits to a number of States as part of our Continuous Improvement and Focused Monitoring System (CIFMS) for ensuring compliance with, and improving program performance under, Parts B and C of the Individuals with Disabilities Education Act (IDEA). We conducted our visit to Michigan during the week of November 16, 2003.

The purpose of our verification reviews of States is to determine how they use their general supervision, State-reported data collection, and State-wide assessment systems to assess and improve State performance and to protect child and family rights. The purposes of the verification visits are to: (1) understand how the systems work at the State level; (2) determine how the State collects and uses data to make monitoring decisions; and (3) determine the extent to which the State's systems are designed to identify and correct noncompliance.

As part of the verification visit to the Michigan Department of Education (MDE), the OSEP staff met with Dr. Jacquelyn Thompson (the State's Director of Special Education), and members of MDE's staff who are responsible for the State's general supervision activities (including monitoring, mediation, complaint resolution, and impartial due process hearings), the collection and analysis of State-reported data, and ensuring the participation in, and reporting of student performance on State-wide assessments. Prior to the visit, OSEP staff reviewed a number of documents¹, including the following: (1) the State Plan for Special Education for Fiscal Year 2000; (2) the Continuous Improvement Monitoring Project Report; (3) the Michigan Monitoring Model; (4) the Monitoring Standards for Special Education, 2003; (5) the Administrative Rules; (6) information from the State's website; (7) the Complaint Procedures for Special Education; (8) the Technical Manual for Submission of the Special Education Student and Personnel Data Counts, 2003; (9) monitoring reports issued by the State; (10) complaint and due process hearing logs; (11) the Center for Educational Performance and Information Single Record Student Database Meta Data, 2003; (12) the WESTAT Michigan

¹ Documents reviewed as part of the verification process were not reviewed for legal sufficiency but rather to inform OSEP's understanding of your State's systems.

Part B Data Profile, 2003; (13) the MI-Access Handbook; and (14) the MI-Access State Results 2002.

In addition, we conducted a conference call on September 16, 2003, with Michigan's Steering Committee on Special Education, to hear their perspectives on the strengths and weaknesses of the State's systems for general supervision, data collection, and, for Part B, State-wide Assessment. Dr. Jacquelyn Thompson also participated in the call.

The information that Dr. Thompson and her staff provided during the OSEP visit, together with all of the information that OSEP staff reviewed in preparation for and during the visit, greatly enhanced our understanding of MDE's systems for general supervision, State-wide assessment, and data collection and reporting.

General Supervision – Monitoring

In reviewing the State's general supervision system, OSEP collected information regarding a number of elements, including whether the State: (1) has identified any barriers, (e.g., limitations on authority, insufficient staff or other resources, etc.) that impede the State's ability to identify and correct noncompliance; (2) has systemic, data-based, and reasonable approaches to identifying and correcting noncompliance; (3) utilized guidance, technical assistance, follow-up, and – if necessary – sanctions, to ensure timely correction of noncompliance; (4) has dispute resolution systems that ensure the timely resolution of complaints and due process hearings; and (5) has mechanisms in place to compile and integrate data across systems (e.g., 618 State-reported data, due process hearings, complaints, mediation, large-scale assessments, previous monitoring results, etc.) to identify systemic issues and problems.

OSEP believes that MDE's monitoring procedures constitute a reasonable approach to the identification and correction of noncompliance; however OSEP cannot, without also collecting data at the local level, determine whether they are fully effective in identifying and correcting noncompliance. OSEP found that MDE's systems for general supervision do not ensure that complaint, due process hearing, and State-level review decisions are issued within the required timelines under 34 CFR §§300.661 (a) and (b) and §§300.511(a), (b), and (c). In an October 30, 2002 letter responding to MDE's Improvement Plan, OSEP required MDE to submit quarterly reports to OSEP on its progress in meeting complaint timeline requirements and to demonstrate compliance by October 30, 2003. The final Progress Report that MDE submitted to OSEP on September 30, 2003 for the period between June 1, 2003 and August 31, 2003 indicates that MDE continues to be out of compliance with the requirement in 34 CFR §§300.661 (a) and (c) that complaints are resolved within 60 calendar days after a complaint is filed or within an extension of time granted due to exceptional circumstances that exist with respect to a particular complaint. MDE did not provide any data during the verification visit that indicates that this noncompliance has been corrected.

As documented in MDE's monitoring procedures, OSEP found that local level compliance is determined through special education monitoring that occurs on a five-year cycle. The complete monitoring cycle includes all intermediate school districts, and their constituent local educational agencies, along with programs operated by the Michigan Family Independence Agency and Departments of Education, Corrections, and Community Health. In each

monitoring cycle a combination of approximately 12 intermediate school districts (ISD) and State agencies are monitored based upon two sampling options: (1) monitoring the total number of students receiving special education at a confidence level of 90% with a 10% sampling error; or (2) monitoring five percent of all students in the ISD or State agency. MDE hires contractors to serve as monitors and conduct monitoring visits. MDE staff supervises all contracted monitors. The monitoring cycle begins with reviews and subsequent reports from an ISD monitor or a State agency monitor. Next, the MDE monitor validates the reports. The final step in the monitoring process is the issuance of a formal written monitoring report within 60 business days. The monitoring process includes the following: (1) administrative interview; (2) forms review; (3) personnel review; (4) parent survey; (5) student file review; and (6) a program and service review. The ISDs and State agencies also conduct annual monitoring of all districts and facilities during the years in which they are not monitored by MDE.

MDE staff informed OSEP that a written response to any required corrective actions is due 10 days after the written report is issued. The corrective action process includes the following steps to ensure noncompliance is corrected: (1) after receiving the monitoring report the local educational agency or State facility may submit proof of compliance within thirty school days and achieve "close out status" or the local educational agency or State facility must submit a corrective action plan within thirty school days with proof of compliance submitted within the following thirty school days; (2) MDE follows-up to ensure effectiveness of the corrective action plan at a five-year follow-up review; and (3) during the five-year follow-up compliance monitoring review any deviation from an approved corrective action plan will not be accepted as corrective action unless a deviation request was submitted prior to conducting the follow-up compliance monitoring review. In addition, the ISD and State agencies conduct an annual self-monitoring of all constituent districts and facilities. ISD and State agencies are required to maintain all monitoring results and corrective actions for validation by MDE during its onsite review.

OSEP reviewed the monitoring files from the Traverse Bay Area ISD, selected as an example of MDE's five-year special education monitoring cycle. Student files were reviewed based upon a stratified random sample reflecting eligibility and the district of the program. In this particular file review MDE found 20 standards to be out of compliance based upon the Michigan Monitoring Model and Standards. MDE found 18 of the 20 standards identified to be out of compliance 25% or more of the time within the local districts of the Traverse Bay Area ISD, and therefore considered them potential systemic issues. MDE provided the Traverse Bay Area ISD a record of the items found out of compliance and the corrective actions needed to bring them into compliance. To ensure that the Traverse Bay Area ISD completed corrective actions, MDE conducted a follow-up targeted monitoring.

As documented through written executive orders from MDE, a significant change over time to the special education system has been the number of special education divisions that have been transferred to other departments of government in Michigan. Currently, special education and early intervention services are provided through seven departments outside of MDE that include: (1) Treasury; (2) Management and Budget; (3) Department of Information Technology; (4) Corrections; (5) Family Independence Agency; (6) Career Development; and (7) Community Health. MDE informed OSEP that within the next six months to a year, MDE will be engaged in a major reorganization that will transfer some special education functions

back to their Department. MDE informed OSEP that this is a positive change that will allow a more efficient and effective monitoring process resulting from greater influence in direct supervision of services and better organization of services provided by MDE.

General Supervision-Complaint management

As set forth at 34 CFR §§300.661 (a) and (b), each State educational agency shall include in its complaint procedures a time limit of 60 days after a complaint is filed to issue a written decision to the complainant, unless an extension of time is permitted due to exceptional circumstances that exist with respect to a particular complaint. The implementation of 34 CFR §300.661 has been a long-standing area of noncompliance for MDE. In 1993 OSEP found that MDE's State complaint procedures were not sufficient to ensure that complaints were resolved within 60 days of the agency's receipt of a request for an investigation or within timelines extended due to exceptional circumstances. In a follow-up monitoring review in 1996, OSEP found that the MDE had revised its tracking system and was only resolving complaints within required timelines 88% of the time. In 2002 OSEP again found that the MDE did not meet the requirements under 34 CFR §300.661(a), as demonstrated by data that MDE provided in the State's Improvement Plan submitted in July of 2002. In a letter to MDE dated October 30, 2002, OSEP required MDE to submit quarterly reports to OSEP on its progress in meeting complaint timeline requirements and to demonstrate compliance by October 30, 2003. The final Progress Report that MDE submitted to OSEP on September 30, 2003 concerning MDE's implementation of 34 CFR §300.661 indicated that MDE was out of compliance with this requirement. MDE did not submit any additional data during the verification visit related to complaint timelines and discussions with MDE staff during the verification visit confirmed that MDE continues to be out of compliance with this requirement.

After onsite discussions between MDE staff and OSEP staff and OSEP's review of MDE's quarterly Progress Reports, complaint logs, procedures for tracking complaint timelines for fiscal year (FY) 2003, OSEP has again determined that MDE does not ensure that complaints are resolved within 60-days of the agency's receipt of a request for a complaint investigation or within extended timelines due to exceptional circumstances with respect to a particular complaint. Specifically, OSEP found, and the MDE staff confirmed, that: (1) MDE was unable to bring complaint timelines into IDEA compliance by October 30, 2003 as indicated by the last quarterly Improvement Plan Progress Report submitted to OSEP on September 30, 2003. The September progress report indicated that during the period of June 1, 2003 and August 31, 2003, 64.5% of complaints were resolved within 60 days or within extended timelines due to exceptional circumstances with respect to a particular complaint; (2) MDE does not maintain a system that ensures the accurate calculation of the 60-day time limit for complaint investigations. Currently MDE maintains three tracking documents. MDE staff identified one complaint log that indicated the dates complaints were submitted; a second complaint log that identified the dates letters and documents were transmitted between the State, ISD, and complainant; and a third complaint log that indicated the final status of complaints with timeline extension information. MDE initially submitted only one complaint log. After consultation with MDE staff to understand the log submitted, OSEP was informed of the other tracking documents for complaints. Overall, OSEP found that the documents were difficult to reconcile because of missing cases, and that tracking complaint timelines required a time intensive process of reviewing all three documents. (3) One of the criteria MDE uses for

determining what is considered an “exceptional circumstance” with respect to a particular complaint does not meet the standard in 34 CFR §300.661 (b)(1). MDE staff informed OSEP that extensions are granted for complaints whenever both parties are in agreement with the need for an extension. The requirements under 34 CFR §300.661(b)(1) allow granting of extensions only if exceptional circumstances exist with respect to a particular complaint. OSEP found that MDE has incorrectly applied 34 CFR §300.661 (b)(1) and this has contributed to timelines exceeding the 60-day time limit.

The September 30, 2003 progress report indicates that 35.5% of complaints are not resolved within the 60-day time limit or within extended timelines due to exceptional circumstances. MDE’s inability to implement 34 CFR §300.661 over a span of 10 years beginning when OSEP identified noncompliance with this requirement in 1993, represents an egregious long-standing disregard of the provisions of parent and student rights as identified in IDEA. MDE’s previous assurances of their ability to bring their complaint system into compliance and the continued history of noncompliance are of great concern to OSEP and signal the need for stronger change and intervention strategies. As a result, OSEP requires that MDE take immediate and effective action to correct this noncompliance. If MDE does not submit data that demonstrates that this noncompliance is corrected within 60 days from the date of this letter, OSEP will consider the imposition of sanctions, including the designation of MDE as a high risk grantee, and the imposition of special conditions on the State’s Part B grant award for Federal Fiscal Year (FFY) 2004, pursuant to 34 CFR §80.12 or other enforcement actions authorized by law.

General Supervision – Due process hearings

MDE operates a two-tier due process system. As set forth at 34 CFR §§300.511(a) and (c), the public agency must ensure that not later than 45 days after the receipt of a request for a hearing a final decision is reached in the hearing and a copy mailed to each of the parties, unless the hearing officer at the request of either party grants a specific extension of time. MDE’s log of due process hearing requests for fiscal year 2003, provided to OSEP for review indicated that MDE calculated the percentage of cases found to be outside of the 45-day timeline plus any extensions of time granted, using only “closed” due process cases instead of including due process cases still in process. When all due process cases were examined (e.g. pending due process hearings) to determine if a final decision was reached in the hearing and a copy mailed to each of the parties within the required 45-day timeline from receipt of the request for a hearing, and any granted extensions, OSEP found that only 67% of the cases were completed within the required 45-day timeline plus any additional timeline extensions.

Sections 300.511(b) and (c) require that the State educational agency must ensure that not later than 30 days after the receipt of a request for a review, a final decision is reached in the review and a copy mailed to each of the parties, unless the reviewing officer at the request of either party grants a specific extension of time. MDE does not maintain a separate log to track State level reviews. MDE’s log of due process hearing requests for fiscal year 2003 provided to OSEP for review indicated that only nine requests for State level review were filed and of those decisions seven were reached within 30 days or within a properly granted extension and the remaining two cases were four and seven days late respectively. In the review and analysis of the hearing log, OSEP found that the log as currently constructed does not facilitate the tracking of separate timelines for each tier of the MDE due process system.

OSEP found that MDE was not in compliance with 34 CFR §§300.511 (a), (b) and (c) and requires that within 60 days from the date of this letter MDE must submit a plan to correct its noncompliance with the due process hearing and state level review timelines as soon as possible but no later than one year from the date of this letter.

In the final review and analysis of the due process systems and the complaints system, OSEP found MDE does not conduct an analysis of its complaint and due process decisions and use that information to identify systemic issues. For example, when OSEP discussed with MDE a due process case concerning the validity of a settlement agreement, MDE was not aware of the case. OSEP recommends that MDE conduct an analysis of its complaint, mediation, and due process systems and use that analysis when conducting on-site monitoring and targeting improvement strategies for the State and ISDs.

State-wide Assessment

In looking at the State's system for State-wide assessment, OSEP collected information regarding a number of elements, including whether the State: (1) establishes procedures for State-wide assessment that meet the participation, alternate assessment, and reporting requirements of Part B, including ensuring the participation of all students, including students with disabilities, and the provision of appropriate accommodations; (2) provides clear guidance and training to public agencies regarding those procedures and requirements; (3) monitors local implementation of those procedures and requirements; and (4) reports on the performance of children with disabilities on those assessments, in a manner consistent with those requirements. In order to better understand Michigan's system for State-wide assessment, OSEP also discussed with MDE staff how the alternate assessment is aligned with grade-appropriate content standards.

OSEP has determined, through its review of the State's written procedures for State-wide assessments and reports to the public and the Secretary on the participation and performance of children with disabilities on such assessments, that those procedures, as written, and those reports are consistent with Part B requirements. OSEP cannot, however, without also collecting data at the local level, determine whether all public agencies in the State implement the State's procedures in a manner that is consistent with Part B.

The Michigan Educational Assessment System (MEAS) was approved by the State Board of Education and is comprised of three assessment programs: (1) the Michigan Educational Assessment Program – MEAP; (2) MI-Access – Michigan's alternate assessment; and (3) ELL-Access – Michigan's assessment for English language learners. MDE staff informed OSEP that all students are required to participate in the MEAP. If a student does not participate in the MEAP with standard or non-standard accommodations, the student must take the MI-Access. The consequences of using a nonstandard accommodation include the assessment: (1) counting as being assessed for participation rate; (2) counting as not proficient when calculating adequate yearly progress; and (3) not counting toward the Michigan Merit Award that is a monetary award based on a student's assessment score. All assessment accommodations must be specified in the IEP. MDE tracks student participation in the assessment process through its centralized system. Every student is assigned a unique student identification number and must

be accounted for through testing. MDE does not require students to pass the State-wide assessment to receive a diploma.

Both the general and alternate assessments are aligned with the Model Content Standards contained in the Michigan Curriculum Framework. The alternate assessment has two components. The first component of the alternate assessment (MI-Access Phase 1) is designed to assess students based on observation of the student carrying out a standard set of activities during the course of a normal school day. The second component of the alternate assessment (MI-Access Phase 2) incorporates a variety of formats including multiple-choice, short answer, extended response, and teacher observation. Approximately 3% to 4% of all students take the alternate assessment.

MDE's staff reported that extensive training and technical assistance are provided on the MEAP and MI-Access. MDE holds a fall conference each year in different regions of the State along with a live teleconference designed to facilitate questions and answers around assessment. MDE also maintains an extensive website related to assessment especially for the MI-Access. The website contains all training materials, related resources, and upcoming information related to assessment. Training and technical assistance also include guidance for individualized education program (IEP) teams on making decisions regarding appropriate accommodations, who should be given the alternate assessment, and procedures for conducting an alternate assessment. As evidenced through MDE written procedures, the State ensures that IEP teams address student participation in assessment through its two-tier monitoring process. The first tier of the monitoring process is a review of the ISD by an ISD Compliance Monitor. The second tier of the monitoring process is the validation of the ISD and monitoring of the LEA by the State Special Education Compliance Monitoring Team.

In conclusion, OSEP found that MDE has a State-wide assessment system that ensures the participation of students with disabilities and accountability for improving the performance of children with disabilities.

Collection of data under section 618 of the IDEA

In looking at the State's system for data collection and reporting, OSEP collected information regarding a number of elements, including whether the State: (1) provides clear guidance and ongoing training to local programs/public agencies regarding requirements and procedures for reporting data under section 618 of the IDEA; (2) implements procedures to determine whether the individuals who enter and report data at the local and/or regional level do so accurately and in a manner that is consistent with the State's procedures, OSEP guidance, and section 618; (3) implements procedures for identifying anomalies in data that are reported, and for correcting any inaccuracies; and (4) has identified any barriers, (e.g., limitations on authority, sufficient staff or other resources, etc.) that impede the State's ability to accurately, reliably and validly collect and report data under section 618.

MDE staff informed OSEP that the Registry Management System (RMS) that has been in place for over 10 years is being replaced by the Michigan Compliance Information System (MICIS). Although the RMS was in place for over 10 years, the use of this system was not mandatory for all ISDs and LEAs. Therefore, in some cases ISDs and LEAs have various software vendors to

meet their daily student information tracking needs. The MICIS functions in the same way as the RMS but with enhanced web functionality and a greater ability to coordinate information across several different systems. LEAs and ISDs may choose to use MICIS as their daily tracking system or they may choose to use an outside software vendor for this function. All LEAs and ISDs are required to submit their data to the MICIS data system using its web interface. The MICIS system provides electronic documentation of the student's IEP services and service providers.

MDE staff informed OSEP how MICIS utilizes several checks and balances to help ensure the integrity of the data the system collects. One of the most impressive checks is the ability of the system to automatically crosswalk information from one of several previous systems used in the State when submitting data. In some cases LEAs and ISDs are still currently using an older system as their means of daily record tracking. To significantly lower the rate of error in entering data into MICIS, MICIS allows the transmitter to identify the data stream and configure MICIS to automatically crosswalk the categories in the older data system to the categories in the newer MICIS system without reentering the information. A second level of data validation occurs in the entry of the actual data. Each data field in the MICIS system is configured to identify common errors and requires the user to pass an online error and logic check. The system also utilizes a duplicate data check to ensure the accuracy of the data as the data is being prepared for ISD/LEA reports, and 618 data submission tables that are submitted to OSEP.

OSEP was informed that the State implements the following mechanisms to ensure that all individuals who are responsible for collecting and reporting 618 data receive effective and accurate guidance: (1) a year-round web site concerned with 618 data collection and other modules of MICIS (www.micis.org); (2) a year-round helpdesk for technical assistance staffed by the State's 618 data collection subcontractor; (3) yearly in-service training conducted by the State for those individuals responsible for 618 data collection and reporting; and (4) yearly State dissemination of the Michigan Special Education Technical Manual for Student and Personnel Counts. The subcontractor also maintains a support web site with an automated help desk, training schedules and registration, manual downloads, and current news about the system.

As noted above, MDE is refining MICIS use. Currently, ISDs, LEAs, and public school academies may each maintain different Part B systems. Each system may also have different software providers. MDE staff informed OSEP that an ongoing challenge is coordinating data collection activities between the State's contractor, the Center for Educational Performance Information and other data collection offices outside the Department of Education. MDE also informed OSEP that data validity and reliability issues often originate outside of MICIS and may require working with multiple software vendors or the Department for Correction.

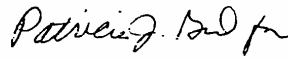
In conclusion, OSEP found that Michigan has constructed a valid and reliable data collection system to capture, record, and report data for students with disabilities that supports 618 data reporting requirements of IDEA.

We appreciate the cooperation and assistance provided by your staff during our visit. We look forward to receiving your plan within 60 days from the receipt of this letter for addressing

Page 9 – Honorable Thomas D. Watkins

noncompliance with the due process hearing and state level review timeline requirements under 34 CFR §§300.511(a), (b) and (c). As noted above, if MDE does not demonstrate compliance with the complaint timelines within 60 days from the date of this letter, OSEP will consider the imposition of sanctions, including the designation of MDE as a high risk grantee, and the imposition of special conditions on the State's Part B grant award for federal fiscal year 2004, pursuant to 34 CFR §80.12 or other enforcement actions authorized by law. In addition, we will be looking for updates and an analysis of timelines for your complaint management and due process system in your Annual Performance Report. We look forward to our continued collaboration with Michigan to support your work to improve results for children with disabilities and their families.

Sincerely,



Stephanie Smith Lee
Director
Office of Special Education Programs

cc: Dr. Jacquelyn Thompson



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF EDUCATION
LANSING



THOMAS D. WATKINS, JR.
SUPERINTENDENT OF
PUBLIC INSTRUCTION

May 14, 2004

Stephanie Smith Lee
Director, Office of Special Education Programs
400 Maryland Avenue, SW
Washington, D.C. 20202

Dear Ms. Lee:

The attached reports constitute our response to the Office of Special Education Programs (OSEP) memorandum received on March 16, 2004 to Superintendent Thomas Watkins from you. In attachment A, the report contains a plan for addressing noncompliance with the due process hearing and state level review time line requirement under 34 CFR §§300.511(a), (b) and (c). Attachment B is a report demonstrating compliance with the complaint time lines at 34 CFR §300.661 and a plan for tracking complaints and creating a system that ensures the accurate calculation of the 60-day time limit for complaint investigations.

Relative to the due process hearing and state level review timeline requirement our plan includes steps and specific dates to complete both short and long term goals. In the short term, we are using the existing database to track the timeliness of hearings and documented extensions to the timelines. One of the long term goals is to establish a new database which will provide for better tracking of timelines. We have begun this process through arrangements with Chuck James from Great Lakes Area Regional Resource Center (GLARCC) and Allan Knapp, our Data Manager.

Relative to demonstrating compliance with the complaint timelines, we are actively closing complaint cases utilizing 6 outside contractors, and 7 internal compliance investigators (prior to October, 2003 there were only 4 internal staff assigned to complaint management), we are meeting weekly and using the existing database, which has been slightly modified, to chart our progress. We have clarified our understanding of "exceptional circumstances" with Dr. Al Jones and our criteria for opening and closing dates. We have also begun a project to establish a new complaint database with Chuck James and Allan Knapp.

We continue to cross reference our due process hearing information with open complaint cases and the new database system will provide an automatic tracking system between complaints, due process hearings, and mediations.

Sincerely,

Jacquelyn J. Thompson, Ph.D., Director
Office of Special Education and Early Intervention Services

CC: Al Jones, OSEP
Judy Gregorian, OSEP

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Due Process Hearings

On March 16, 2004, the Office of Special Education Programs (OSEP) issued its findings regarding the November, 2003 Verification visit to Michigan. The letter directed the Michigan Department of Education (MDE), Office of Special Education and Early Intervention Services (OSE/EIS) to create a plan to correct noted problems with the hearing timelines at both the local hearing level and the state review level. The plan is to be submitted by May 14, 2004. Further, the plan must allow OSE/EIS to correct the noncompliance by March 15, 2005. In addition, the OSEP letter raised a concern about the database used to track due process hearings. The concern focused on the difficulty in tracking timeliness of hearings at both local and state levels.

The context in which this improvement plan will be created and implemented bears mention. Michigan currently uses a two-tier hearing system and offers training to persons wishing to serve as hearing officers but they serve as independent contractors. MDE is, however, now developing a redesign of the system to make it a single tier operation employing salaried hearing officers, one of the outcomes of Michigan's Continuous Improvement Monitoring Process. Design of this corrective plan needs to be sensitive to the tension created by the anticipated transition so that provision of due process hearings continues uninterrupted until the new system is in place. Currently, the parties at the local level have an opportunity to mutually select hearing officers either from the list of trained hearing officers or any other source they find acceptable. This feature has had support historically in the Special Education community but has been identified as a barrier to the efficiency and integrity of the system. Likewise, its continued operation adds an additional challenge to designing a corrective plan. Simply removing the non-compliant hearing officer from the list may not be sufficient.

Plan Development

Short-term Plan for Timeline Compliance Improvement

An informal e-mail survey of hearing officers sought input regarding improvement in compliance with timeline extension requirements. Responses suggest that the MDE could provide an early warning of the timeline expiration date, allowing hearing officers to complete the paperwork necessary to grant an extension. Responses also indicated that the MDE should begin enforcing removal authority.

In April, 2004, a meeting was held with David Brock, Supervisor, Policy and Compliance, Lauren Harkness, Administrative Law Judge, Chuck James from the Great Lakes Area Regional Resource Center (GLARRC), Allan Knapp, our Data Manager, and other OSE/EIS staff members to identify crucial problems to be addressed and to begin to set up parameters of a rudimentary database redesign that will include extensions and calculate the number of days "off the clock" for each case to allow tracking of the 45-day timeline.

On May 14, 2004, a listing of all current case information from the existing database will be sent to GLARRC for database redesign.

By June 30, 2004, the MDE will develop a range of possible interventions and/or sanctions to move hearing officers toward better compliance. These interventions/sanctions will be included in a Directive Letter, which will be reviewed with the Attorney General regarding defensibility before dissemination. The MDE will determine the stakeholder representatives who should receive the letter in addition to the hearing officers and the Directive Letter will be mailed.

By July 31, 2004, the MDE will require hearing officers to notify the MDE that matters such as: 1) settlement negotiations between the parties, 2) continuances, and 3) pending court interventions justify substantial timeline extensions.

Long-term Plan for Due Process Hearing Improvement

MDE staff, with the assistance of GLARRC and Dr. Knapp, will build a new, more comprehensive ACCESS database and a prototype system for due process hearings that will be fully tested and operational by March 15, 2005. The system will include directives for timeline compliance along with the interventions and/or sanctions for noncompliance. The database will include new fields necessary to track timeline compliance.

An archive will be built and old data from closed cases will be entered, as time allows, one year at a time into the new system.

The new database will include linkages and interaction between the due process hearing database, the complaints database, and the mediations database.

Training and technical support will be provided for all persons needing access to the new system on an ongoing basis.

An evaluation will be designed to determine the efficacy of the system and identify necessary improvements on a continuing basis.

Complaint Management

This report is in response to the Office of Special Education Programs (OSEP) memorandum received on March 16, 2004 to Superintendent Thomas Watkins from Director Stephanie Smith Lee regarding Michigan's complaint management system's 60-day time limit.

The Michigan Department of Education (MDE), Office of Special Education and Early Intervention Services (OSE/EIS) is using a multi-faceted approach to improve the system for investigating, reporting, and tracking complaints. In October, 2003, two additional staff members were hired by MDE following a lengthy hiring freeze and one internal staff member was reassigned, bringing the number of internal staff assigned to complaint management from 4 to 7. In addition, 6 persons were contracted beginning February 2004 to assist with the complaint backlog.

Weekly meetings were held to track the status of each open complaint and assist the investigators in problem-solving difficult issues. Where consistent problems exist, the field was notified of their existing obligations as well as sanctions that would be used for those who do not comply with the required timelines.

The understanding of "exceptional circumstances" was clarified with OSEP, along with the criteria Michigan uses for opening and closing dates.

The Great Lakes Regional Resource Center (GLARRC) and Allan Knapp, our Data Manager, were engaged to assist in making the necessary changes to the current database as a short term solution. The existing database was modified to chart the lifecycle of each complaint and calculate the number of days that a complaint is "off" the timeline due to an agreed upon exceptional or common circumstance. The current database now calculates the beginning date (the date the complaint letter was received) and the closing date. Using those dates, the database calculates the number of days the complaint was open, subtracts the number of days the complaint was "off" the timeline, and shows the total number of days the complaint was open.

As proof of compliance, the following chart, using the format of the Michigan Department of Education Part B Annual Performance Report (APR), shows the status of all complaints that were open during the required reporting period of March 16, 2004 through May 14, 2004.

Table 1.1: Formal Complaints						
(1) March 16, 2004 – May 14, 2004	(2) Number of Complaints	(3) Number of Complaints with Findings	(4) Number of Complaints with No Findings	Number of Complaints not Investigated – Withdrawn or No Jurisdiction	(6) Number of Complaints Completed/ Addressed Within Timelines	(7) Number of Complaints Pending as of: 5/14/04
TOTALS	168	103	9	13	58	26

The source of information, shown in the table above, is the existing, modified database. Appendix 1 is a copy of the complaint log as of 5/14/04. In the future, the log will show the total number of days the complaint was open (days open minus exceptions).

Of the 122 complaints whose status was "open" on March 16, 2004, all 122 were closed by May 14, 2004. Many of these cases had already exceeded the 60-day timeline. Therefore, while 100% of the cases were closed, only 41.6% were closed within the timeline. Of the 44 new cases opened during this time period, 11 were completed within the timeline, 4 were withdrawn, 3 are in due process hearings, and 26 are still open at the end of the reporting period.

The OSE/EIS is working with GLARRC and Dr. Knapp to create a new ACCESS database for tracking complaints. The new database will capture data from each complaint, as it is opened, using a new submission system and will include processes to track each complaint through the entire lifecycle of the complaint, including exceptional and/or common circumstances that “stop the clock” as they were clarified with Al Jones, from OSEP. This will allow the program to calculate the total number of days the complaint is or was open and the entire timeline, or lifecycle, of the complaint.

Directives to the field will be automatically generated based on the 60-day timeline, along with notices reminding the field personnel of their legal obligations and sanctions that will be used if the timelines are not adhered to.

The new database will provide reports for management and planning purposes and will allow for a daily status report regarding each complaint, report information on all open complaints, and make the calculations necessary to comply with all state and federal reports. It will create a report that provides information in the same format that the APR needs for cases opened during a specific time period.

Weekly problem-solving meetings will be held and all complaints will be reviewed at that time based on a status report generated from the database.

All information regarding complaints will be accumulated in a single database and reports, or logs, will include any of the data collected, in any format, or log, that is needed.

The database that tracks complaints will interact with the databases for tracking due process hearings and mediations to more effectively track the status of all cases.

The OSE/EIS will be providing ongoing notice to the field and other parties involved in a complaint regarding their responsibility to respond in a timely manner. Various levels of sanctions are being developed within the complaint process to address non-compliance.

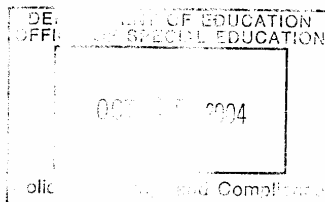


ANNIE M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF EDUCATION
LANSING



THOMAS D. WATKINS, JR.
SUPERINTENDENT OF
PUBLIC INSTRUCTION



October 13, 2004

MEMORANDUM

TO: Local and Intermediate School District Superintendents, Local and Intermediate School District Directors of Special Education, Chief Executive Officers of Public School Academies, Special Education Advisory Committee, Intermediate School District Parent Advisory Committee Chairs, State Parent Advisory Committee, Early-On Coordinators, State Interagency Coordinating Council, Continuous Improvement Monitoring Steering Committee, State and Local Hearing Officers, Education Alliance, Organizations and Associations Interested in Special Education and Early-On

FROM: Jacquelyn J. Thompson, Ph.D. Director
Office of Special Education and Early Intervention Services

Roberta E. Stanley, Director
Office of Administrative Law

SUBJECT: Time Line Compliance in Special Education Due Process Hearings

A part of the Office of Special Education Programs (OSEP) findings following its November 2003 verification visit to Michigan expressed dissatisfaction with time line compliance within our due process hearing system. A specific concern identified by OSEP was that up to 33% of pending cases had been in process for more than 45 days and had no time line extension documented and on file on the date OSEP reviewed the hearings database.

The OSEP directed creation of a plan with the goal of correcting the problem no later than March 15, 2005. The preliminary steps, including soliciting hearing officer input and drafting the plan, have been completed. The hearing officers have received notice of the plan. They have also been afforded a brief period of time to bring their existing cases into compliance.

This memorandum serves to notify the stakeholders of the operation of the sanctions elements of the plan. The sanctions reflect the Michigan Department of Education's authority under the "Procedures for Appointment of Local Special Education Due Process Hearing Officers" to

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608 WEST ALLEGAN STREET • P.O. BOX 30008 • LANSING, MICHIGAN 48909
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remove a hearing officer from the list of trained hearing officers for failure to complete a hearing within 45 days or to timely file documentation to grant an extension to a specific date.

The gist of the requirement is that each hearing officer must, in every case pending before him or her, either render a written decision within 45 days or maintain and file with the Office of Administrative Law documentation of a grant of a requested time extension to a specific date *and* render a written decision by the extended date. This is the minimum standard embodied in the Federal Regulations.

Beginning with the date of this memorandum, if the Office of Administrative Law finds that a hearing officer has failed to comply with this requirement, he or she will be afforded a five day period to show that the determination is erroneous. If this showing is not made or if the hearing officer does not respond, sanctions will be imposed as follows:

- First instance – 30 day removal (from the list of trained hearing officers)
- Second instance – 90 day removal
- Third instance – permanent removal

These removals will not impair a sanctioned hearing officer's ability to proceed with cases already pending before him or her. Notice of the names of any hearing officers on removal status and the duration of their removal will be enclosed with the acknowledgement letter the Office of Administrative Law sends to the parties in all cases filed during the period of removal.

If a hearing officer is permanently removed, he or she will not be permitted to attend any subsequent hearing officer training sponsored by the Department and his or her name will be deleted from the list of trained hearing officers when the list is next published. Further, this notice will inform the parties that the Office of Administrative Law will NOT appoint any hearing officer while he or she is on removal status.

Use of the acknowledgment letter to communicate removals will assure that those most interested in the information will receive it. It heightens, however, the Office of Administrative Law's need for districts to supply complete and accurate contact information for all the involved parties at the time notice of the hearing request is sent to the Office of Administrative Law. It is our expectation that all stakeholders would recognize the basic procedural fairness involved in assuring that all parties to the dispute receive these notices on an equal and timely basis and therefore, promptly supply the needed contact information to the Office of Administrative Law.

If you have any questions about this information, please contact Lauren Harkness by telephone at (517) 373-8369, by facsimile at (517) 373-9238 or by e-mail at harknessl@michigan.gov.